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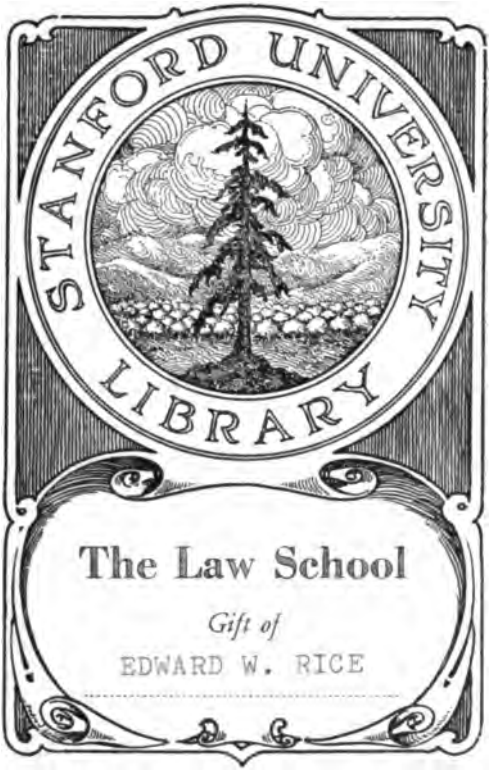
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A TREATISE

T. G. Carver

ON THE LAW OF

BILLS OF LADING;

COMPRISING

THE VARIOUS LEGAL INCIDENTS ATTACHING TO THE BILL OF LADING; THE LEGAL EFFECTS OF EACH OF THE CLAUSES AND STIPULATIONS; AND THE RIGHTS AND LIABILITIES OF CONSIGNORS, CONSIGNEES, INDORSEES, AND VENDEES, UNDER THE BILL OF LADING.

WITH AN APPENDIX,

CONTAINING

FORMS OF BILLS OF LADING CHIEFLY USED IN THE UNITED KINGDOM, CONTINENTAL, MEDITERRANEAN, TRANS-ATLANTIC, AFRICAN, ASIATIC, COLONIAL, WEST INDIAN, AND OTHER IMPORTANT TRADES.

BY

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SOLICITOR AND NOTARY PUBLIC.

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PREFACE.

Of all commercial documents with which we are acquainted, none, probably, is more familiar than the Bill of Lading; but, owing to the numerous changes and additions which have of late years been made to this instrument, the difficulty of interpreting its clauses and stipulations, and of ascertaining the rights and liabilities of the parties to it, has much increased.

The standard works on Shipping Laws all treat more or less of such rights and liabilities, but in so general a manner as to render it difficult, even for those possessing such works, to determine what is the legal effect of the different clauses and stipulations in the modern Bill of Lading.

It is endeavoured in the present work to comprehend the various principles and cases by which the construction of the Bill of Lading must be governed, and so to make it of practical utility to all interested in the subject. It does not purport to be more than a handy-book for easy reference on the several branches of law intimately connected with the Bill of Lading, an acquaintance with the principles

of which cannot fail to be of value alike to the owners and agents of vessels engaged or interested in the various trade routes, as well as to the merchant and the ship-master. It is hoped it may also prove acceptable, and be of service, to the legal practitioner.

In the Appendices will be found forms of Bills of Lading, carefully selected from a large number, representing almost every trade throughout the commercial world. For these the author is indebted to the kindness and courtesy of the several Secretaries of the Ship-owners' Associations, Chambers of Commerce, and Agents of the various Ship and Steam-ship Companies in England as well as in India.

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LIST OF ABBREVIATIONS.

Abbott on Sh.	Abbott on Shipping.
Ad. & E.	Adolphus and Ellis's Reports.
Ad. & E. N. S.	Adolphus and Ellis's New Series, Queen's Bench Reports
Ala.	Alabama Reports.
Ang. on Car.	Angell on Carriers.
Arn.	Arnold's Reports.
Arnould on M. I.	Arnould on Marine Insurance.
Asp. Mar. Law Ca.	Aspinall's Maritime Law Cases.
Atk. on Sh.	Atkinson on Shipping Laws.
Baker on Quar.	Baker on the Laws of Quarantine.
B. & Ad.	Barnwall and Adolphus's Reports.
B. & Ald.	Barnwall and Alderson's Reports.
B. & B.	Broderip and Bingham's Reports.
B. & C.	Barnwall and Cresswell's Reports.
B. & L.	Browning and Lushington's Reports.
B. & P.	Bosanquet and Puller's Reports.
Ben. L. R.	Bengal Law Reports.
Ben. on Sales	Benjamin on Sales.
Bell's Prin.	Bell's Principles of the Law of Scotland.
Best and S.	Best and Smith's Reports.
Black	Black's United States Supreme Court Reports.
Blatchf. C. C. R.	Blatchford's United States 2nd Circuit Court Reports.
Bing.	Bingham's Reports.
Bing. N. C.	Bingham's Reports, New Cases.
Bom. H. C. Rep.	Bombay High Court Reports.
Bourke's Rep.	Bourke's Reports, Supreme Court, Calcutta.
Burr.	Burrows' Reports.
Cal. W. R. Civ. R.	Calcutta Weekly Reporter, Civil Rulings.
Cal. W. R. Rec. Ref.	Calcutta Weekly Reporter, Recorder's References.
Camp.	Campbell's Reports.
C. B.	Common Bench Reports.
C. & P.	Clark and Finnelly's Reports.
C. & J.	Crompton and Jervis's Reports.
C. L. R.	Common Law Reports.
Cross on Lien	Cross on the Law of Lien.
Com. Ca.	Commercial Cases, Supreme Court, Calcutta.

C. Rob.	Charles Robinson's Admiralty Reports.
Ch. & Tem. on Car.	Chitty and Temple on the Law of Carriers.
Car. & M.	Carrington and Marshman's Nisi Prius Reports.
Car. & P.	Carrington and Payne's Reports.
Cowp.	Cowper's Reports.
Crump's Prin. of the Law of Marine Ins. and Gen. Avr.	Crump's Principles of the Law of Marine Insurance and General Average.
Cur.	Curtis's New York Reports.
De Gex & J.	De Gex and Jones's Reports.
Denio	New York Reports.
Dods. Ad. Rep.	Dodson's Admiralty Reports.
Doug.	Douglas's Reports.
Dow. & R.	Dowling and Ryland's Reports.
Dow. & L.	Dowling and Lowndes' Practice Cases.
East Rep.	Term Reports. East's Reports.
El. & Bl.	Ellis and Blackburn's Reports.
El. & El.	Ellis and Ellis's Reports.
Esp.	Espinasse's Reports.
Ex.	Exchequer Reports.
F. & F.	Foster and Finlason's Reports.
Gray	Gray's Reports.
Hagg.	Haggard's Admiralty Reports.
H. & R.	Harrison and Rutherford's Reports.
H. Blkst.	H. Blackstone's Reports.
Hilton	Hilton's Reports.
H. L. Cas.	House of Lords' Cases.
Hodges	Hodges's Reports.
Holt	Holt's Reports.
How.	Howard's Reports.
Hurl. & C.	Hurlstone and Coltman's Reports.
Hurl. & N.	Hurlstone and Norman's Reports.
Humph.	Humphrey's Reports.
Ind. Jur. N. S.	Indian Jurist, New Series.
I. L. R. Cal. Ser.	Indian Law Reports, Calcutta Series.
Jur.	Jurist Reports.
Jur. N. S.	Jurist Reports, New Series.
Kay on Sh.	Kay on Shipping.
Kent's Com.	Kent's Commentaries.

Kern ..... Kernan's New York Reports.

L. T. ..... The Law Times Reports.
L. J. Q. B. ..... Law Journal, Queen's Bench Reports.
L. J. C. P. ..... Law Journal, Common Pleas.
L. J. Adm. ..... Law Journal, Admiralty.
L. J. Ex. ..... Law Journal, Exchequer.
L. J. Ch. ..... Law Journal, Chancery.
Law R. Adm. ..... Law Reports, Admiralty.
L. R. C. P. ..... Law Reports, Common Pleas.
L. R. Eq. ..... Law Reports, Equity.
L. R. H. L. ..... Law Reports, House of Lords.
L. R. P. C. ..... Law Reports, Privy Council.
Lex. Mer. ..... Lex Mercatoria.
Lowndes on G. A. ..... Lowndes on General Average.
Lush. Adm. Rep. ..... Lushington's Admiralty Reports.

Mad. H. C. R. ..... Madras High Court Reports.
M. & G. ..... Manning and Granger's Reports.
M. & P. ..... Moore and Payne's Reports.
M. & Rob. ..... Moody and Robinson's Reports.
M. & Scott ..... Moore and Scott's Reports.
Mee. & W. ..... Meeson and Welsby's Reports.
Moore ..... Moore's Reports.
Moore P. C. ..... Moore's Privy Council Cases.
Mason ..... Mason's Circuit Court Reports.
M. & R. ..... Manning and Ryland's Reports.
M. & S. ..... Maule and Selwyn's Reports.
McLach. on Sh. ..... McLachlan on Shipping.
Mit. Mar. R. ..... Mitchell's Maritime Register.
Mit. Mar. N. ..... Mitchell's Maritime Notes.

N. & M. ..... Neville and Manning's Reports.
N. & P. ..... Neville and Perry's Reports.
N. R. ..... Bosanquet and Puller's New Reports.

Olcott Ad. Rep. ..... Olcott's Admiralty Reports.

Park's M. I. ..... Park on Marine Insurance.
Parsons on Sh. ..... Parsons on Shipping.
Peake ..... Peake's Nisi Prius Reports.
Per. & D. ..... Perry and Davison's Reports.

Q. B. ..... Queen's Bench Reports (Adolphus and Ellis N. S.)

Rail. and Can. Ca. ..... Railway and Canal Cases.
Roll. Abr. ..... Rolle's Abridgment.

Scott	Scott's Reports.
Scott N. R.	Scott's New Reports.
Sess. Cases	Sessions Cases (Scotch).
S. C.	Scotch Cases.
Sm. L. C.	Smith's Leading Cases.
Smith	Smith's Reports.
Stark	Starkie's Reports.
Story on Agency	Story on Agency.
Story on Bail.	Story on Bailments.
Str.	Strange's King's Bench Reports.
Style	Style's Reports.
Sumner	Sumner's Reports.
Taunt.	Taunton's Reports.
T. R.	Term Reports, Durnford & East's Reports
Tyr.	Tyrwhitt's Reports.
W. Rob.	William Robinson's Reports, Admiralty Cases.
Wharton on Neg.	Wharton on Negligence.
Whart.	Wharton's Pennsylvania Reports.
Wils.	Wilson's Reports.
W. R.	Weekly Reporter.
Wis.	Wisconsin Reports.
Y. & J.	Younge and Jervis's Reports.

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PART I.

THE NATURE OF A BILL OF LADING AND ITS LEGAL INCIDENTS.

A BILL of lading is a negotiable document transferable by endorsement, and is made singly, or in sets of two, three, four, or six, or even eight,[1] and is signed by the master or purser of the vessel, or by an agent or clerk of the owners or charterers, or by a broker *per procuration;* and in such cases the person so signing must be authorized to do so, either expressly or impliedly.

A bill of lading and its nature.

In one case evidence was given at the trial, and admitted, that in the case of steamships it was uniformly the custom for the broker of the ship, and not the master, to sign the bills of lading.[2]

Upon the bill of lading being signed, each one of the set becomes an original,[3] and purports to be an acknowledgment that the goods specified in it have

[1] Dutton *v.* Powles, 8 Jur. N. S. 970, s. c. 31 L. J. Q. B. 191; Straker *v.* Kidd & Co., 47 L. J. Q. B. 365.

[2] Hayn Roman & Co. *v.* Culliford, 47 L. J. Q. B. 756.

[3] 3 Kent's Com., s. 208.

been received on board of the vessel in good order and condition, and that the same will be carried from the port of lading to, and delivered at the port of discharge, in like good order and condition[1] to A B or order or assigns, subject to the several conditions and exceptions set forth in the bill of lading.[2] Upon the goods being received on board, the master, or person acting for him (usually the mate), gives a receipt for the same, and afterwards in exchange for this receipt, the bill of lading is handed to the holder of the receipt, which being binding on the owners, should always be obtained before the bills of lading are signed.[3] Bills of lading should be signed as soon as practicable after the receipt of the goods on board, and this is as a rule done within twenty-four hours of such receipt.

Bills of lading by the law merchant are representatives of the property for which they have been given, and the endorsement and delivery of a bill of lading transfers the property from the vendor to the vendee, is a complete delivery of the goods,[4] divests the vendor's lien, and has, by 18 and 19 Vict., ch. cxi., and Act IX. of 1856 (The Indian Legislative Council's Act), the further effect of vesting in the vendee all the vendor's rights of action against the ship-master and owner.

[1] Petrocochino *v.* Bott, 43 L. J. C. P. 214.

[2] Caldwell *v.* Ball, 1 T. R. 213.

[3] Evans *v.* Nichol, 11 L. J. C. P. 6.

[4] Lickbarrow *v.* Mason, 2 T. R. 63, 1 Sm. L. C. 699; Newsom *v.* Thornton, 6 East Rep. 17; Ben. on Sales, 673.

The Indian Stamp Act I. of 1879, sec. 3, cl. 3, thus defines a bill of lading:

"Bill of lading means any instrument signed by the owner of a vessel or his agent, acknowledging the receipt of goods therein described, and undertaking to deliver the same at a place and to a person therein mentioned or indicated."

Form of.

It is not compulsory to use any particular form of bill of lading. Bills of lading must be made out according to the directions of the shipper of the goods or of the holder of the receipt given on the shipment,[1] who is in general the person entitled to the bill of lading. He has a right to name the consignee to be mentioned in the bill of lading, as it is presumed that the goods have been shipped on account of the shipper, though it is not so expressed in the receipt.

It is perfectly legal to make additions to the general conditions, and even to stamp notice of the same on the margin. So other clauses may be introduced, either to take away the responsibility of the master and owners in cases where they would otherwise be responsible, or to give to them, or to the shippers, an advantage to which they would not otherwise be entitled.[2] And in practice this is constantly done where it is considered the nature of the voyage, cargo, or risks, require it; however,

[1] Craven *v.* Ryder, 6 Taunt. 433.

[2] Leer *v.* Yates, 3 Taunt. 388; Jesson *v.* Solly, 4 Taunt. 52; Evans *v.* Forster, 1 B. & Ad. 118.

when a marginal note is inserted, or an addition made at the foot, it should, to prevent litigation, be initialed by both parties to the contract, and all stipulations should be made in terms sufficiently intelligible to indicate that the law merchant is not to prevail. So where a stamp in red ink was put on the back of the bill of lading by the shipowner, which provided that freight was to be paid before delivery if required, the court, assuming that the stamp was on before the bill of lading was delivered to the shipper, considered that there was no evidence of any assent to its provisions by the shipper, and held that it was not admissible to control the provisions of the bill of lading.[1] In many trades the shipowners have their own form of bill of lading, and will not sign, or sanction the signing of, any others which contain stipulations differing from those in their own forms.

Stamp on. All bills of lading signed by the master, or by any person authorized to do so, no matter what their number, being original instruments, must be stamped.

33 and 34 Vict., ch. 97, sec. 56, is as follows:—

"1. A bill of lading is not to be stamped after the execution thereof.

"2. Every person who makes or executes any bill of lading not duly stamped, shall forfeit the sum of £50."

And by the schedule to this statute, "a bill of lading of or for any goods, merchandise or effects to

[1] Ang. on Car., 198 n.

be exported or carried coastwise," must bear a stamp of six pence.

The Indian Stamp Act I. of 1879, sec. 16, enacts that "all instruments chargeable with duty and executed by any person in British India shall be stamped before or at the time of execution," and by schedule 1, article No. 12 of the same Act, the stamp fee on a bill of lading is fixed at 4 annas. This Act imposes no penalty similar to the English statute for executing an unstamped bill of lading. By sec. 34, proviso 1, any such unstamped instrument shall be received in evidence and acted upon on payment of the proper stamp duty, together with a penalty of Rs. 5; but, notwithstanding this payment, if it appears to the Collector that the bill of lading was executed unstamped, or on insufficiently stamped paper, with the intention of evading payment of the proper duty, the party so executing it may be prosecuted for an offence against the stamp laws under section 40 of the Act. It is also enacted that "if a bill of lading is drawn in parts, the proper stamp therefor must be borne by each one of the set."

By schedule 2 to the same Act, article No. 7, "a bill of lading is exempted from stamp duty when the goods therein described are received at a place within the limits of any port as defined under the Indian Ports Act XII. of 1875, and are to be delivered at another place within the limits of the same port."

By the rules framed by the Governor General of

India in Council under the provisions of the Stamp Act, dated 11th April 1879, the stamp on bills of lading must either be impressed, or denoted by stamp labels affixed thereto by a Government officer, and by section 23 of the English statute, all duties on bills of lading must be denoted by impressed stamps; the affixing of an adhesive stamp will not suffice, and a bill of lading so stamped would be treated as unstamped.

Where bills of lading have been passed in a foreign port which is not subject to any stamp law, or where they have been insufficiently stamped, or bear no stamp, without any intention of evading the stamp laws where such laws are in force, such bills of lading, on arrival in the United Kingdom, may be sent to the inland revenue officers, to be impressed with the proper stamp.

By 33 and 34 Vict., ch. 97, sec. 15, it is provided:—

"Any unstamped or insufficiently stamped instrument, which has been first executed at any place out of the United Kingdom, may be stamped at any time within two months after it has been first received in the United Kingdom, on payment of unpaid duty only."

And with respect to British India, the Indian Stamp Act I. of 1879, sec. 17, provides—

"Every instrument chargeable with duty executed only out of British India and not being a bill of exchange, cheque or promissory note, may be

stamped within three months after it has been first received in British India; or where such instrument cannot, with reference to the description of stamp prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, and he shall stamp the same in such manner as the Governor General in Council may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for."

Copies need not be stamped.

Copies of bills of lading, or office copies as they are called, so certified, may be drawn and need not be stamped; but no ship-master, or person acting on behalf of a shipowner with respect to the matters therein contained, is entitled to sign such copies.

Stamp by whom payable.

Bills of lading are documents representing property in goods shipped on board any vessel; and are, therefore, held by the merchant to whom they belong. There is no law to compel a shipowner to pay for stamps on bills of lading, and by the general custom of trade, the shipper who presents them for signature pays for the stamps. Their being presented by a broker would not alter the relative position of shipper and shipowner.

Bills of lading in sets.

Bills of lading are drawn in sets for the information, guidance, and security of all parties thereto, as well as to facilitate the use of them as negotiable instruments.[1] Thus, the shipper of the goods usually sends one or two of these parts of the bill to his

[1] Bell's Prin., p. 156.

agent, factor, or other person, to whom the goods are to be delivered at the place of destination; that is, one on board the vessel with the goods, another by the post or other conveyance, and one he retains for his own security: the master should also take care to have one for his own use and future guidance. It appears from the books treating on this subject, that according to the common course of merchants there are only three bills of lading or parts, and Buller, J., was of opinion that where there were four parts, this circumstance would have been proper for the consideration of a jury.[1] Now, however, by long usage and custom, and the additional requirements of trade, the use of four or more parts is of ordinary occurrence.

Mate's receipts.

The intending shipper, on application to the ship-owner or his agent, receives a shipping order duly filled in with the nature, quantity, and quality of the goods to be shipped, and is usually in the following form:—

No.____ (*Place and date*)

To the COMMANDING OFFICER, on board the

Ship for

SIR,

Please to receive on board from

and grant a receipt for the same.

The cargo to be sent off as required by the Captain.

We are, Sir,

Your obedient servants,

Agents for the Captain and owners.

[1] Lickbarrow *v.* Mason, 2 Term. R. 72.

In India, by the Stamp Act I. of 1879, schedule 1, article No. 58, a "shipping order for or relating to the conveyance of goods on board of any vessel requires a stamp of one anna."

This the shipper forwards with the goods to the vessel named, and upon the same being received on board, a receipt is given for them, usually by the mate.

In order to ensure prompt despatch, it is requisite that the ship, on the day named in the order, should be ready to receive, that is, not only to take on board, but to take in and stow away cargo, meaning thereby not only the particular quantum of cargo mentioned in the shipping order, but a full cargo, from whomsoever offered: she must moreover be in a position to continue doing this from day to day expeditiously, and without delay or interruption arising from the contemporaneous discharge of her inward cargo.[1]

It is the custom in many ports for the mate to give receipts for goods when tendered alongside, but a mate being responsible for tally and correct delivery of the cargo, should not give a receipt until the goods are on the ship's deck. A mate cannot be compelled to give a receipt for goods alongside, and if he does so, he may render himself liable to a criminal indictment should bills of lading be obtained on his receipts and fraud be practised. If the mate gives receipts for goods, or accepts the custody of them whilst they are in the lighter, or on the quay,

[1] Taylor *v.* Brooke, 1 Bom. H. C. Rep., App. 48.

or wharf, the master and owners of the vessel are responsible for any loss or damage which may happen to the goods before they are actually placed on board the vessel.[1]

Assignment of.

The true holder of the mate's receipts can, by endorsement thereon, transfer all his interest in the goods named therein to a *bonâ fide* indorsee. An equitable assignment can be made, but the assignment will be of no avail unless notice is given to the person to be charged therewith; so an indorsee of a mate's receipts, without notice to the master, cannot acquire any title to the goods as against the owners or *bonâ fide* holders of the bill of lading for value. For instance, where brokers delivered goods on board a ship and took mate's receipts in the name of their principals, who afterwards endorsed the receipts to the brokers, and the captain signed bills of lading without notice of the endorsement, it was decided that the holders of the bills of lading were entitled to the goods, and that the captain was justified in signing the bills of lading without obtaining the mate's receipts in exchange, and that the brokers had no claim for indemnity from the owners. Also that the rights of the holders of the bills of lading would not have been affected by notice to the captain.[2]

Bills of lading should be signed only on production of the mate's receipts.

The universal principle is, that a master from the

[1] Fragano *v.* Long, 4 B. & C. 219; Thompson *v.* Traill, 6 B. & C. 36; Schuster *v.* McKellar, 26 L. J. Q. B. 281.

[2] Evans *v.* Nichol, 11 L. J. C. P. 6; Hathesing *v.* Laing, 43 L. J. Ch. 233, Law R. 17 Eq. 293; Rajaram Govindram *v.* Brown and others, 7 Bom. H. C. R. O. C. J. 97.

time he receives the goods is chargeable with those goods; and if he has no notice that any other owner in the world exists but the man in whose name the receipt is passed, he incurs no liability when he assigns the bills of lading to the person who, as far as he is concerned, is the sole owner.

If the master satisfies himself with his own hands and his own eyes that the goods are on board, then the mate's receipts become to him a matter of perfect indifference; if he can only satisfy himself whose goods they are, being told and knowing that the goods belong to A B, he is justified in signing the bills of lading.[1]

But whenever a receipt has been given for goods put on board a vessel, the master ought to be most careful not to sign and deliver any bill of lading without receiving in exchange such receipt, or seeing it destroyed: for otherwise he might place himself under a twofold responsibility—a responsibility to the shipper in case he should require the goods to be delivered to his own order and have a legal right to do so; and a responsibility to the holder of the bill of lading, who might be induced to purchase the goods on the faith of it.[2]

The liabilities which may arise from the neglect of this precaution are exemplified by the case of Schuster and others *v.* McKellar and Young.[3] There the

[1] Hathesing *v.* Laing, 43 L. J. Ch. 233, L. R. 17, Eq. 293.

[2] Cawasjee *v.* Thompson, 5 Moore P. C. 165; Falke *v.* Fletcher, 34 L. J. C. P. 146; Bell's Prin. 410 *et seq.*

[3] 26 L. J. Q. B. 281, 7 El. & Bl. 704.

plaintiffs purchased in their own names, and paid for 50 tons of spelter, C having previously given them an order for that quantity, and, at C's request, they permitted the spelter to be put on board a ship which was under charter, at a lump sum, from London to Calcutta, with a stipulation that the captain should sign bills of lading, as directed by the charterers; by whom the vessel had been put up as a general ship, through brokers, of whom C engaged tonnage room for the spelter. The spelter was put on board on the 17th May by a lighterman employed by C, and according to previous arrangement, he delivered to the plaintiffs the mate's receipt which he received on loading. According to the usual course of dealing between the plaintiffs and C, they would keep the receipt until he redeemed it by paying the price of the spelter. C, after shipment of the spelter, applied to the brokers to obtain signed bills of lading, which were signed by the master and given to C, who endorsed them to a *bonâ fide* holder for value. C becoming bankrupt, the plaintiffs wrote to the shipowner that they held the mate's receipt, and that they required the delivery of the spelter to them or their agents; and a similar notice was served on the master on his arrival at Calcutta. The shipowner wrote to the master recommending him to store the spelter until the dispute should be settled among the different claimants, or if the mate's receipts were presented, not to give up the spelter till he got the receipt and the bills of lading. The

master, after the receipt of this letter and the notice from the plaintiffs, and after a demand of the spelter by the plaintiff's agent, stored it at Calcutta, and delivered it to the holder of the bill of lading, on an indemnity by him. The plaintiffs having brought an action of trover for the spelter against the ship-owner and master, it was held that the property in the spelter remained in the plaintiffs; and that the master was not justified in signing and delivering bills of lading to C, without the production of the mate's receipt. That the master was therefore liable for a conversion of the spelter; and that the ship-owner had also made himself liable by his letter to the master; also that as the plaintiffs did not claim under a bill of lading signed by the master, as agent of the charterers, the shipowner would have been liable, as owner, for the wrongful act of the master.

Master is bound to sign bills of lading.

There is no compulsion by statute on ship-masters to sign bills of lading, but by the custom of trade, a master should sign bills of lading, as they are the only evidences of shipment and of the right of the shipper to the goods.

Where the goods have been received on board, and the mate's receipts are produced or, if required, an indemnity is offered where they are lost or cannot be found, the master is bound to sign bills of lading for the goods mentioned in the receipts, or put them ashore at the ship's expense; his not doing so would render the ship owner liable for all loss

incurred, and also for insurance if the vessel should be lost through not sailing at the time appointed.[1]

If a master is not permitted to sign under reservation, he should enter a protest and serve the shipper with a copy of it. Merchants want the bills of lading either for sale of the goods, or to deposit them with policies of insurance for advances. Independently of pledging bills of lading, these instruments are also required by the shippers to send to their consignees, and very often they are accompanied with bills of exchange. Masters of ships should not, therefore, decline to sign bills of lading unless they have good reasons for doing so; and, generally, withholding signature to bills of lading is an unsafe proceeding where certainty does not exist.[2] On the other hand, no shipper of goods has the right to insist upon a captain inflicting a wrong on third parties by certifying that he has more cargo than is entered on his mate's receipt.

Master to sign bills of lading as presented.

Where, by the charter-party, "the master is to sign bills of lading as presented," the master is not only authorized, but has an obligation imposed upon him to grant or sign bills of lading in whatever form, and to whatever effect, he may be required to sign them. Therefore, where, though in fraud of the plaintiff, a bill of lading was granted and signed by the master under and in strict pursuance of his authority,

[1] Falke *v.* Fletcher, 34 L. J. C. P. 146; Peek *v.* Larsen, L. R. 12, Eq. 383.

[2] Davis *v.* McVeagh, 4 Asp. Mar. Law. Ca., p. 149.

which had been endorsed for value to the plaintiffs, it was held that the property in the goods mentioned in the bill of lading had passed to them, and that they were entitled to maintain an action for non-delivery.[1] Where freight is to be paid according to the weight delivered at the end of the voyage, and the charter-party contains a clause that the master should sign bills of lading for weight of the cargo put on board as presented to him by the charterers, as between the shipowner and charterer, the master is bound to sign without weighing the cargo; but the shipowners would not be bound to deliver more than was shipped, there being no warranty, either express or implied, that the charterers might not make mistakes. If however the shipowner pays to the consignees the difference in value between the quantity alleged to have been shipped and the quantity delivered, he cannot recover the same from the charterers, such payment on his part being voluntary. Thus, where a declaration stated that it was agreed between plaintiffs and defendants that the plaintiff's ship should take a cargo of coals from C to B, "the master of the ship to sign bills of lading for weight of cargo put on board as presented to him by the defendants, without prejudice to the tenor of the charter-party"; that 573 tons of coal were shipped; and that the defendants caused the master to sign bills of lading for 605 tons, whereby the plaintiffs were forced to pay the consignees at B £31

[1] Gabarrow *v.* Kreeft, and Kreeft *v.* Thompson, 44 L. J. Ex. 248.

for the value of the difference between 605 tons and 573 tons and £13 for dues, it was held on demurrer that the declaration was bad.[1]

Course where master refuses to sign.

But if the master refuses to sign bills of lading, or insists upon qualifying them, the shipper should serve the master with a formal notice to sign the bills of lading,[2] and if he still refuse to do so, he should then appear before a notary with his clerk or servant who delivered the goods on board, and cause a protest to be made, of which fact he should also give notice to the master, who will be liable in damages for any loss occasioned by a wrongful refusal on his part to sign the bills of lading; the compensation being the amount of loss actually incurred.

It was stipulated by a charter-party made between the plaintiffs and the defendants that the master of the ship should sign bills of lading as presented, or pay a named penalty. He refused to do so, and sailed from the port of loading without having signed any bills of lading. He proceeded to the port of discharge, delivered a portion of the cargo to the consignees, but ceased doing so and warehoused the remainder, as they, acting under instructions from the charterers, claimed to deduct from the freight an amount equal to the penalty named in the charter-party. In an action by the charterers against the shipowners for conversion and for penalties,—

[1] Brown *v.* The Powell Duffryn Steam Coal Company, 44 L. J. C. P. 289.

[2] See Appendix, Form B.

Held, that the plaintiffs could recover nominal damages for the breach of contract in not signing bills of lading as presented; but that there had been no conversion by the defendants of the cargo, as they had carried it for the plaintiffs, had intended to deliver the whole of it to the consignees of the plaintiffs, and had been prevented by the acts of the plaintiffs from completing the delivery.[1]

A vessel cannot be detained for the purpose of procuring the master's signature to bills of lading, and where an action was brought to compel a master to sign bills of lading in the usual, legal and customary form, and it was sought to detain the vessel by injunction, from sailing until the same were signed, it was stated by the Court that it was not aware of any case in which a Court of Equity had ever compelled a master to sign bills of lading in a particular form, and as the master's refusal to sign was a wrong which could be easily compensated for in damages, the plaintiffs were not entitled to a decree, and dismissed the suit.[2]

Effect of signing bills of lading per procuration.

There is no legal definition of the term "per procuration." It is generally understood to mean that the procurator is acting under a power of attorney, but it is considered that "procuration" means any authority. If a company carries on business and allows a clerk or manager to sign his name to bills on behalf of the company, that would import

[1] Jones and another *v.* Hough and another, 49 L. J. C. P. 211.

[2] Grasemann and Co. *v.* Littlepage, 3 Cal. W. R. Rec. Ref. 1.

a general authority in the clerk or manager who so signs.[1] By his acts the company would be bound, and the public would not be called upon to inquire into the extent of his authority. So where a person has the general management of a business and warehouse, and is in the habit of sending quantities of merchandise to London by vessels hired, and charter-parties signed by him by procuration, he has a general authority to bind his principal, although he may have had no authority to sign a particular charter-party in which his principal had no interest.[2] If the party signing describes himself as procurator, and the person dealing with him is aware of the character in which he acts, he must make such inquiries as are necessary for his own safety. On this point Pollock, C.B., said, "The practical question is, what is the extent of the inquiry that you are to make, and after making the inquiry, what is the sort of answer that may be satisfactorily given, and which will protect you, though it should turn out that the authority had been exceeded? I apprehend that it is this. If you see a bill accepted by A on behalf of B and C, and you have no dealings with them, and know nothing about them, to what extent are your inquiries to go? I must say I think you are not bound to go to a man and say, 'Sir, produce me the power of attorney or authority to accept the bill.' If you find a person who has accepted a bill as agent or by procuration,

[1] Alexander v. M'Kenzie, 18 L. J. C. P. 94.
[2] Smith v. M'Guire, 27 L. J. Ex. 465.

as a clerk in the house that he has accepted bills of that sort for, from day to day, month to month, year to year, and done it in the course of his employment in the house in which he is employed regularly as a clerk; if you find this, you have done enough. You need not ask for a power of attorney or authority, nor need you go to a man, and say, 'Is this on account of the house?' You find that he is in the house acting as the agent, and recognized as the agent of the house. If you find it done in that way by him as the agent, you need do no more."[1]

The term "per procuration" is a special notice to the party taking the document, that the person so signing acts under a special authority, and such party takes the document on the faith of that representation.

In the case of Grant *v.* Norway,[2] Jervis, C. J., in considering the effect of a master's signature to a bill of lading, adopted this principle. It is therefore the duty of the shipper to satisfy himself that the person signing per procuration has authority to do so.

A broker is not the agent of the master of a ship to sign bills per procuration. A broker's signature to a bill of lading makes the shipowner for whom the agent acts, liable to third parties; but the master is responsible to his employer only on instruments

[1] Smith *v.* M'Guire, 27 L. J. Ex. 469.
[2] 20 L. J. C. P. 93.

signed by himself, he being liable to be sued upon his own contracts.

Title to bill of lading.

When a receipt has been given by the mate, or by a person in charge at the time, for goods received on board, the person who is in lawful possession of that receipt is the person entitled to the bill of lading. In Craven *v.* Ryder,[1] Gibbs, C. J., said, "I take it, the practice is, that the person who is in possession of the lighterman's receipt, is the person entitled to the bill of lading, which ought to be given only to the holder of that receipt. Consequently, the holder of that receipt retains a control over the goods, at least until he has exchanged the receipt for the bill of lading." In a case where the master of a vessel gave written receipts to the owner of goods delivered on board, and on those receipts being given up issued a bill of lading in good faith to the party returning them, who had obtained them by false pretences from the shipper, it was held that the captain was not liable in trover to the shipper, unless the bills of lading were surrendered, or he was fully indemnified against all damages consequent upon the delay necessary to unload them, and all the expenses of loading and unloading them were paid.[2]

In one case where the plaintiff Lutscher, who carried on business in London under the firm of Lutscher and Co., made an arrangement with Levy,

[1] 6 Taunt. 435; see also Schuster *v.* M'Kellar, 26 L. J. Q. B. 281; Thompson *v.* Trail, 2 Car. & P. 334; Ruck *v.* Hatfield, 5 B. & Ald. 632.

[2] Parsons on Sh., vol. 1, p. 179 n.

of Oran, to supply him with funds in order to enable him to make purchases which were to be consigned to the house of Lutscher and Co., in London. Messrs. Lutscher and Co. were to dispose of such consignments, and to recoup themselves out of the sale in respect of the advances made by them. It appeared that in respect of a particular cargo of palm leaves, about 250 tons, Messrs. Lutscher having entered into a contract for the sale of these palm leaves to the Tovil Paper Company, the company chartered a ship to take on board the cargo at Oran, and this was accordingly done, the bill of lading being made out in the name of Levy. The day after the cargo was shipped, Levy stopped payment, and his affairs were taken in hand by certain liquidators appointed by creditors in Oran. The palm leaves arrived in London in due course, and were claimed on the part of Messrs. Lutscher. The liquidators, however, having obtained possession of the bill of lading, forwarded it to the Comptoir d'Escompte, with instructions not to part with it unless the amount of the value of the palm leaves was paid. It was contended on the part of Lutscher that, having paid the amount to enable Levy to purchase the palm leaves, he could not be called upon to pay it again. As, however, the Comptoir d'Escompte declined to hand over the bill of lading unless they received the amount claimed, this was paid under protest, and an action commenced on the part of Messrs. Lutscher to enforce repayment. To this statement the defendants, the Comptoir

d'Escompte, demurred. The matter was argued at considerable length, and the Court unanimously gave judgment in favour of the plaintiff, holding that the arrangement was such as would in equity amount to an agreement of hypothecation; and that, therefore, the liquidators at Oran would have no better title to the bill of lading than Levy himself would have had, and that Levy would undoubtedly have been compelled under the arrangement to forward the bill of lading to Messrs. Lutscher in London.[1]

Master's right to a copy of bill of lading.

The master of a ship should be careful what he signs, and insist on retaining one copy of the bills of lading in order to understand what his contract is, and also to compare with the one given up on delivery. Unless it is expressly stipulated by the charter-party that the shipper, or charterer, should hand to the shipowner or his captain, copies of the bill or bills of lading for the separate parts of the cargo; or this duty is incorporated[2] in it by mercantile usage; or arises from the peculiar circumstances of any particular case, the furnishing to the captain for ship's use, of a copy of the bill, or each of the bills of lading, signed by him, should be specially stipulated for in order to prevent any doubts being raised as to his right.

Effect of master, who is also charterer, signing bills of lading.

It is an almost invariable practice and usage that

[1] Lutscher *v.* Comptoir d'Escompte de Paris, 3 Asp. Mar. Law Ca. (N. S.) 209.

[2] Dutton *v.* Powles, 30 L. J. Q. B. 169; s. c. 31 L. J. Q. B. 191; and 8 Jur. N. S. 970.

the owners of a ship, although they let it out upon freight to a charterer, do themselves appoint a captain and the crew, the chartering of the ship not being so much the chartering of the hull, as of the ship in a state fit for the purpose of mercantile adventure. Therefore the chartering of a ship in any particular case to the master does not create any more responsibility in the owner to the shippers of goods, where such fact is made known to them, than if the ship were freighted to an entire stranger. The master by the terms of the charter-party is constituted, as between him and the shippers, owner of the vessel, and contracts with them not as the agent of the owner, but on his own account; and therefore he, and not the owner, is liable to the shippers for the non-delivery of their goods pursuant to the bills of lading.

By the charter-party in Newberry *v.* Colvin,[1] which case was carried to the House of Lords, the owner covenanted with Betham that he should be master, that the owner should be allowed to put on board 100 tons of iron for the outward voyage, and that the ship "should be put and continued in the service" of Betham for twelve months, with power to load such goods as he thought fit, and to trade to and from certain specified ports; the owner to man the ship and to provide stores and necessaries for the ship and crew during that period. Betham, on his part, accepted the appointment as master, and covenanted to accept, receive, and take the said ship into his

[1] 7 Bing. 190; see also Schuster *v.* M'Kellar, 26 L. J. Q. B. 286.

service for twelve months certain, and to pay freight for the use and hire of the ship at the rate of 25*s.* per registered ton per month; and it was further agreed between them, that an agent of the owner should continue on board, with power, in certain events, to displace Betham as master, and to appoint another in his stead. It was held that by this contract the charterer, Betham, was constituted owner *pro tempore*, and that the owner of the ship was not liable upon a bill of lading for non-delivery of the goods therein specified.

Master cannot legally sign two sets of bills of lading for the same goods.

After the master has signed one set of bills of lading for goods which he has received on board, he is *functus officio*, and has no authority to sign another, and a different set of bills of lading for the same goods (all such further bills of lading being void) except upon delivery of the former set of bills or upon the offer of a sufficient indemnity.[1]

If the master sign a second set of bills, without the first set having been given up, and then deliver the goods to the holder of the second set, the holder of the first set, which are the genuine and valid bills, may recover the value of the goods from the shipowners.

If the master has received goods on board at an agreed rate of freight, and signed bills of lading for the same at such freight, he has no authority to substitute for such bills other bills at a less freight.[2]

Where a master is guilty of carelessness in signing

[1] Tindall *v.* Taylor, 4 El. & Bl. 219.

[2] Pearson *v.* Goschen, 33 L. J. C. P. 265.

a second set of bills of lading, without ascertaining that the first set were not in existence at the time he signed the second set, his principal, that is, the owner, is liable for his acts. This was the principle laid down in the case of Hubbersty and another *v.* Ward,[1] where Ward the owner agreed with Marcher and Co., the shippers, to take on board a cargo of wheat deliverable to K. F. at Antwerp; S. the master took on board 229⅛ quarters and signed a bill of lading for that quantity, dated 3rd April, as shipped by Marcher and Co., deliverable to K. F. at Antwerp. On the 13th, 75 more quarters were shipped, and on the same day S. signed another bill of lading for that amount to P., the owner thereof, deliverable at Antwerp to order. 70 more quarters being taken on board, S. signed on the 16th another bill of lading to P. similar to the first. Of these two last bills, one only of each set was signed and in existence. The plaintiffs, Hubbersty and another, having, between the 13th and 17th, advanced money to P. on the two parcels of 75 and 70 quarters, the latter indorsed to them the two bills of lading. After the cargo was shipped, S. was requested by Marcher and Co. to sign a second bill of lading for 145 quarters, being the amount of the two latter parcels of 75 and 70 quarters. This he at first refused to do, alleging that in such case he should be signing for more wheat than he had received on board. Ultimately, however, in the presence and at

[1] 22 L. J. Ex. 113.

the request of P. and upon the latter appearing to tear in pieces the bill of lading for 75 quarters, S. signed the bill of lading for 145 quarters as shipped by Marcher and Co., deliverable at Antwerp to K. At the hearing S. denied his signature to the bill of lading for 70 quarters, and the defendant Ward suggested that P. had forged it. On arrival at Antwerp the cargo was delivered to K. F. by virtue of the two bills of lading for 229½ and 145 quarters. After delivery the plaintiff's clerk at Antwerp demanded possession of 145 quarters by virtue of the two bills of lading for 75 and 70 quarters, but was informed by S. that it had been already delivered to K. F.

The Court held on the finding of the jury that the bills of lading for 75 and 70 quarters were genuine; that the action having been brought against the owner for damages for non-delivery of goods deliverable under bills of lading which had clearly a priority of claim, the plaintiffs were entitled to recover, as the master's power was exhausted by signing the first bills of lading for goods which he had on board.

Master cannot legally sign bills of lading for goods not on board.

In many ports the masters of vessels are compelled, from the pressure which is put upon them by merchants and shippers, to sign bills of lading for goods not only before they are received on board, but in many cases before they are purchased or warehoused, and the holders of these bills of lading procure advances on them, and succeed in obtaining fire and

other insurance policies on the goods enumerated, though as a matter of fact not one of the articles is either bought or shipped.

It is customary to deliver goods in docks on account of shipowners, and it is a common practice for bills of lading to be signed on production of the dock company's receipts.

As the master is not the shipowner's agent to sign bills of lading for goods which he has not received, the shipowner will not be liable even to a holder of the bill of lading for valuable consideration, and without notice, for any loss or damage to goods which have not been either actually or impliedly received by the master or his servants, though bills of lading may have been signed for them: but they are bound by the bill of lading, although the goods were never on board, if they were delivered to the servants of the shipowners on the quay alongside, and the master chose to sign the bill of lading for them.[1] The master may be proceeded against, either civilly or criminally, according to the circumstances of the case, for signing bills of lading for goods which have not been shipped or received on board.

Jervis, C. J., in the case of Grant *v.* Norway,[2] said, "This is a case which presents a question of considerable importance, both to those who take bills of lading

[1] McLean *v.* Fleming, Law R. 2 H. L. 128; Bryans *v.* Nix, 4 Mee. & W. 775; 8 L. J. Ex. 137; British Columbia Mill Co. *v.* Nettleship, Law R. 3 C. P. 499.

[2] 20 L. J. C. P. 93.

on the faith of their representing property, which passes by the transfer of them, and to the shipowner, who is attempted to be bound by all bills of lading that a captain may think proper to sign. The point is whether the master of a ship, signing a bill of lading for goods which have never been shipped, is to be considered as the agent of the owner in that behalf, so as to make the latter responsible. The authority of a master of a ship is large, and extends to all acts that are usual and necessary for the use and management of the vessel, but it is subject to several well-known limitations. He may make contracts to carry goods on freight, but cannot bind the owner to carry freight free; so, with regard to goods put on board, he may sign the bill of lading and acknowledge the nature, quality and condition of the goods. Constant usage shows that the master has this general authority; and if a more limited authority is given, the party not informed of it is not affected by such limitation. Is it then usual, in the management of a ship carrying goods on freight, for the master to give a bill of lading for goods not put on board? All parties concerned have a right to assume that the agent has authority to do all that is necessary; but the very nature of the bill of lading shows that it ought not to be signed till the goods are on board, for it begins by describing them as 'shipped.' There is no ground on which a party taking a bill of lading by indorsement could be justified in assuming he had authority to sign such bills, whether the

goods were put on board or not. If then, from usage and the general practice of ship-masters, it is generally known that the master derives no such authority from his position as master, the case must be considered as if the party taking the bills of lading had notice of the express limitation of authority, and in that case undoubtedly he could not claim to bind the owner by the bill of lading signed when the goods therein mentioned were not on board."

Illustration (*b*) of section 238 of the Indian Contract Act IX. of 1872, which was founded on the above case, is as follows:—

"(*b*) A, the Captain of B's ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignor."

Shipper's liability in not presenting bills of lading for signature.

Detention by a merchant or shipper through not presenting bills of lading, entitles a shipowner to claim compensation for the enforced delay.

If a ship can be detained without any great peril or inconvenience for a short time, the master may wait and sign the bills of lading; when, however, a ship is loaded and ready for sea, any unreasonable or inexcusable delay, that is, a wilful and unnecessary waste of time, is deemed to be a deviation, and may avoid a policy of insurance on ship and cargo.[1]

When bill of lading is revocable.

There is nothing final or irrevocable in the nature of a bill of lading. The owner of the goods may

[1] Arnould on M. I., vol. 1, 439.

change his purpose at any time before the delivery of the goods themselves, or of the bill of lading, to the party named in it, and may order the goods to be delivered to some other than the person named in it.[1] But a consignor, who has laden goods on a general ship, cannot insist on having them re-landed and delivered to him, without paying the freight which might become due for the carriage of them, and indemnifying the master against the consequences of any bill of lading which has been signed by him.[2]

When goods are laden to be carried on a particular voyage, there is a contract that the master shall carry them in the ship, upon that voyage, for freight, and the general rule is, that a contract once made cannot be dissolved, except with the consent of both the contracting parties. By the usage of trade, the consignor, if he re-demands such goods in a reasonable time before the ship sails, is entitled to have them delivered back to him, on his paying the freight that might become due for their carriage, and on indemnifying the master against the consequences of any bill of lading signed for them. A master who has signed bills of lading, cannot with prudence deliver back such goods to the consignor, without having all the parts of the bill of lading delivered up to him, for if any one part has been

[1] Mitchel *v.* Ede, 11 Ad. & E. 888.

[2] Tindall *v.* Taylor, 4 El. & Bl. 227; 24 L. J. Q. B. 12; Thompson *v.* Trail, 2 Car. & P. 334.

transmitted to a third person, such third person may have acquired an interest in such goods.

Where goods have been taken on board a general ship to be conveyed on freight, and bills of lading have been signed by the master, making them deliverable to a consignee at the port of destination, and one of such bills has been transmitted by the master to the consignee, it is quite clear that the consignor has no right to the delivery of the goods in the port of outfit on merely demanding them.

In some cases, where by the terms of the charter-party the shipowners and the master have no lien on the goods put on board, and where no bill of lading has been transferred, the charterer has a right to take the goods out of the ship before she leaves the loading port, if circumstances render it expedient to do so. In such cases, where the master has no lien, he would be liable if he refused to give up the goods when demanded.

Where goods are re-landed, the owner of the goods should pay all expenses incidental to such re-landing.[1]

Although the goods have been shipped in a general ship, and although the master has signed, at consignor's request, a bill of lading for them for delivery to the consignee, or a bill of lading for delivery to consignor's order, which the consignor has endorsed in blank; still until the goods are, or the bill of lading which represents them is by his

[1] Tindall *v.* Taylor, 4 El. & Bl. 227; 24 L. J. Q. B. 12.

authority, actually delivered to the consignee, or his agent, with the intention of vesting the property in the consignee, the consignor may revoke the bill of lading or vary it, or change his purpose, or attach conditions to it.[1]

Goods shipped by mistake on wrong vessel and lost.

If goods are by mistake forwarded to and shipped on board a vessel not named in the bill of lading and are subsequently lost, the consignee will have no lien on the vessel wherein the bill of lading represents the goods to have been shipped; a bill of lading being merely an acknowledgment and *primâ facie* evidence of the receipt of goods, not conclusive, but open to contradiction by parol testimony. Thus, where a bill of lading was given for goods shipped on board the "Lady Franklin," but those goods were actually shipped on board another vessel which was lost; the bill was given by a common agent under mistake, but the ships did not belong to the same owner; it was held that the consignee had no lien against the "Lady Franklin," as there was no cargo to which the ship could be bound, and there was no contract for the performance of which the ship could stand as security.[2]

An intending shipper is not bound to inquire whether the ship is chartered.

Every shipper is bound by the contents of a charter-party of which he has notice; and he cannot complain of want of such notice where it is the result

[1] Gurney *v.* Behrend, 3 El. & Bl. 622; 23 L. J. Q. B. 265; Brandt *v.* Bowlby, 2 B. & Ad. 932.

[2] United States District Court in Admiralty, 3 Asp. Mar. Law Ca. 361. See also Freeman *v.* Buckingham, 18 How. 192.

of his own laches in not applying for bills of lading within a reasonable time. It is the duty of the master to give notice of the charter-party at the time of signing the bill of lading, and the master is justified in refusing to sign bills of lading otherwise than in accordance with the charter-party. Until the shipper is either set upon inquiry, or has notice of a charter-party, he may, immediately on receiving such information or notice, refuse to accept bills of lading, or to be bound by a contract having reference to the charter-party, and is entitled to have his goods returned to him free of any claim by the owners, if the master refuses to sign bills of lading except subject to a charter-party containing objectionable provisions.

In a case where a Norwegian vessel was advertised as a general ship, by Messrs. C. and Co., an English firm, described in the advertisement as brokers, the plaintiffs entered into an agreement with Messrs. C. and Co. for the carriage of certain goods at a stipulated rate of freight, and placed the goods on board before they had notice of any charter-party affecting the ship. It afterwards proved that Messrs. C. and Co. were charterers of the vessel under a charter-party, which provided that the owner should have a lien for freight, dead freight, and demurrage. The captain refused to sign bills of lading, except subject to the charter-party, or to return the goods to the plaintiffs. It was held, that the owners of the ship were not entitled to retain the goods in satisfaction

of their claims under the charter-party, and that the plaintiffs were entitled to have the goods delivered to them free from any claim by the owners.[1]

Owner's liability when ship is chartered.

A person who ships goods on board a vessel and is unaware that she has been chartered, is warranted in assuming that the master is acting by virtue of his ordinary authority, and, therefore, for the shipowners in signing bills of lading. It may be that as between the shipowners, the master, and the charterer, the authority of the master is to sign bills of lading on behalf of the charterer only, and not on behalf of the shipowner. But this altered state of the master's authority will not relieve the owner from liability, as the master still continues to be the servant of the owner, and as such is clothed with a character to which the authority to bind such owner by signing bills of lading attaches by virtue of his office.

Until the fact that such authority of the master has been put an end to is brought to the knowledge of a shipper of goods, the latter has a right to look to the shipowner as the principal, with whom the contract is made.[2]

So, when a master puts up a ship as a general ship and the shippers have no knowledge of the existence of a charter-party, the contract in the bill of lading is between the shippers and the shipowner, and not between the shippers and the charterers;

[1] Peek v. Lar s en, Law R. 12, Eq. 378.

[2] St. Cloud B. & L. 4, 15; 1 Asp. Mar. Law Ca. 309; Sandeman v. Scurr, Law R. 2 Q. B. 98.

for, having delivered their goods to be carried in ignorance of the vessel being chartered, and having dealt with the master as clothed with the ordinary authority of a master to receive goods and give bills of lading on behalf of his owners, they are entitled to look to the owners as responsible for the safe carriage of the goods.

Thus, where wine was shipped on board at Oporto, and bills of lading were signed by the master in the common form without reference to the charter-party, and on the arrival of the vessel at London it was found that the wine had leaked from improper stowage. In an action against the owners for the loss, it was held that the shipper was entitled to look to the owners as responsible for the safe carriage of the wine, inasmuch as he had delivered it to be carried in the ship in ignorance that she was chartered.[1]

So where 1,000 barrels of oilcake were shipped on board the "Figlia Maggiore" at New York, the vessel being at the time under a charter-party of which the shippers were ignorant, the master having put up the ship as a general ship. In an action by the assignees of the bills of lading against the shipowner for damage suffered by the oilcake on the voyage, in consequence of its having been stowed with hogsheads of tobacco, it was held that the owner was rightly sued.[2]

[1] Sandeman *v.* Scurr, Law R. 2 Q. B. 98; Hayn Roman & Co. *v.* Culliford, 47 L. J. Q. B. 755.

[2] The Figlia Maggiore, Law R. 2 Adm. 110; 3 Asp. Mar. Law Ca. 97.

The question of the liability of a shipowner to the consignee of a bill of lading for damages for breach of contract in refusing to deliver goods upon payment of the freight, the same having been shipped in a general ship in ignorance of the charter-party, came before the court under peculiar circumstances, in the case of the "Patria,"[1] which sailed under the flag of the North German Confederation, and was chartered by a German firm to sail from America to a port on the continent, between Havre and Hamburg and Bordeaux inclusive, or a port of Great Britain. The charter-party was in the German language, and provided that the master should not be responsible for dangers of the seas, and for events caused by high powers, or any other event of navigation; the vessel was loaded on the west coast of Central America with a general cargo for Hamburg, part of which consisted of coffee shipped by a foreign firm. This coffee was stowed near the bottom of the hold, and goods consigned to other consignees were stowed above it. The master signed bills of lading for this coffee in English, without reference to the charter-party, to be delivered at Hamburg (the dangers of the seas only excepted) to the plaintiffs or assigns. The plaintiffs were merchants in London, and at the time of the shipment, neither they nor the shippers had notice of the charter-party. On the voyage, owing to the master's severe ill-

[1] Law R. 3 Adm. 436; 41 L. J. Adm. 23. See also the Bahia B. & L. 62; Lloyd v. Guibert, Law R. 1 Q. B. 115.

ness the vessel put into Falmouth, and remained there, war having broken out between Germany and France, owing to which German ships could not sail in safety: the plaintiffs acquiesced in the ship remaining there during, but not after, the blockade of Hamburg, and offered to take delivery of the cargo consigned to them at Falmouth and to pay full freight, and after the raising of the blockade of Hamburg again offered to take delivery either at Falmouth or at Hamburg on the same terms. This was refused, and the Court held that the contract contained in the bill of lading was not affected by the terms of the charter-party, and that the vessel was liable for any breach of the terms of the bill of lading, and that whether the rights of the parties with reference to the delivery of the coffee at Falmouth, depended upon the provisions of the English law, the German law, or the general maritime law, the refusal of those in charge of the vessel to deliver the goods to the plaintiffs at Falmouth after the offer to pay full freight, was not justifiable. If a person ship goods on board a vessel knowing that she is chartered, the consignee of the goods can maintain no action against the owner of the ship if the goods be injured by bad stowage.[1]

Personal liability of parties signing bills of lading.

The person signing a bill of lading acknowledges the receipt of the goods, and the same must be delivered according to such bills, and in as good

[1] Major *v.* White, 7 Car. & P. 41.

condition as they were received, under the exception of the risks expressed.

The master being the agent of the owners, is authorized as such to enter into contracts for the conveyance of goods, and is personally liable, as well as the owners, for breach of all such contracts entered into by him regularly, within the scope of his general authority.

The master's liability is founded on the same consideration as that of an ordinary agent.[1] But for the purposes of commerce, it is convenient that both master and owner should be liable to be sued for any breach of the contract, and it is the only case in which the law gives a special privilege of suing either the master or the owner; this is based on the consideration of the difficulty which parties might experience in ascertaining and proceeding against the shipowners, and will equally apply to cases where the master, or party signing the bill of lading, is the agent of the charterer, and although the merchant may elect to sue the owners, the latter will have their remedy against the master to make good the damages which they may be compelled to pay, if the loss of or damage to the cargo arose from the negligence or misconduct of the master.

So, if the master fails to make delivery of goods in accordance with the bill of lading, an action will lie against him personally by the consignee, and upon judgment being obtained against him, his

[1] Rich *v.* Coe, Cowp. 693.

property can be taken in execution, or his person arrested, and where the consignee has thus elected, he cannot proceed against the owners, even though his decree against the master is unsatisfied.

The shipowners may be liable to indemnify the master in respect of his costs or his imprisonment, but they are liable to him or his estate in respect of the damages recovered against him, and proceedings can be instituted against them by the master as soon as judgment is obtained against him, and before any payment by, or issue of any execution against, him.[1] But if an action is brought against the master and discontinued, this will not prevent, or bar, a similar action being brought against the owner in respect of the same cause of action.[2]

A person contracting as agent will be personally liable, whether he is known to be an agent or not, in all cases where he makes the contract in his own name, or voluntarily incurs a personal responsibility either expressed or implied.[3] Therefore where parties other than the master have signed the bill of lading, they become as agents direct personal parties to the contract, and their liability is precisely the same as that of the master, and upon a just

[1] Priestley *v.* Fernie, 11 Jur. 813; 34 L. J. Ex. 173; 13 L. T. N. S. 208.

[2] Morgan *v.* Couchman, 23 L. J. C. P. 36; 14 C. B. 100; Bottomley *v.* Nuttall, 28 L. J. C. P. 110; Curtis *v.* Williamson, 44 L. J. Q. B. 30.

[3] Williamson *v.* Barton, 31 L. J. Ex. 170.

interpretation of their contracts such a responsibility is naturally, if not necessarily, implied.[1]

Thus where a bill of lading had been signed by the charterers of the ship, not on their own behalf, but as agents for the shipowner, and with his authority, the shipowner was held liable thereon to the owner of goods shipped under such bill of lading, for damage by negligent stowage, such damage not being one of the excepted risks mentioned in the bill of lading.[2]

So where a charter-party was entered into between W. P. of the ship "Celerity," and G. W. W., agent for E. W. and Son, and the same was signed by G. W. W. in his own name: in an action brought on the contract against G. W. W., the court was of opinion that he was personally liable as charterer.[3]

And where it was agreed between Messrs. J. and R. Wilson of Liverpool, owners of the ship "Jessica," and J. S. Cooke of London, on behalf of the Geelong and Melbourne Railway Company, that the said ship, &c. &c., and the charter-party was signed by J. S. Cooke in his own name, it was held he could sue, and was liable to be sued personally on the contract.[4]

So where the defendant signed an agreement in his own name, though in the body described to have

[1] Le Fevre *v.* Lloyd, 5 Taunt. 749; Lucas *v.* Groning, 7 Taunt. 164; Goupy *v.* Harden, 7 Taunt. 159; Simpson *v.* Swan, 3 Camp. 291.

[2] Hayn, Roman & Co. *v.* Culliford, 47 L. J. Q. B. 755.

[3] Parker *v.* Winlo, 27 L. J. Q. B. 49.

[4] Cooke *v.* Wilson, 26 L. J. C. P. 15.

been made by him for and on the part of A. B., he was held personally liable.[1]

These decisions have proceeded on the general rule that where a person signs a contract in his own name, he is *primâ facie* to be deemed to be a person contracting personally,[2] the use of the words "as agents for" or "on behalf of," though expressed in the body of the agreement, being insufficient to prevent the liability of the person signing as principal attaching to him. But if the party qualified his signature by adding after it "agent for," "on behalf of," "per pro.," or other similar words, showing he had no intention of binding himself as principal, he does not incur any personal liability.[3]

It frequently happens that vessels, especially steamers, are obliged to sail before bills of lading can be presented to the master for signature. In such cases it is a common practice for the master, either orally or by a simple letter, to authorize some person, usually the party who has been acting as agent for the ship, to sign bills of lading for him in accordance with the mate's receipts.

The vessel leaves the port, and the bills of lading remaining unsigned are presented to and signed by the parties so authorized, as follows:—

For the master,

A. B. or A. B. and Co.

[1] Tanner *v.* Christian, 24 L. J. Q. B. 91.

[2] Thomson *v.* Davenport, 2 Sm. L. C. 344.

[3] Paice *v.* Walker, Law R. 5 Ex. 173; Fairlie *v.* Fenton, Law R. 5 Ex. 169.

This practice, however convenient, does not necessarily make the shipowners responsible under the bills of lading so signed, and unless the course of dealing had been such that the action of the master, and the signing of the bills by the respective parties in this form, showed that the owners had expressly or impliedly sanctioned the same, or had subsequently ratified these acts, the shipper would have to look to the parties signing or to the master for any breach of contract. But it is by no means uncommon for the parties who have acted for the captain during his stay in port, to sign bills of lading in the above form after his departure, without any express or implied authority to do so. In such cases they would undoubtedly be personally liable under the contract, which they had no authority to enter into either on behalf of the owner or master, neither of whom would in any way be bound by their signatures to the bill of lading.[1]

Effect of bill of lading as evidence.

A bill of lading is evidence against the master or owner of the ship, both of the reception of the goods described in it, and also of any material fact stated in the bill of lading respecting the quantity, the quality, the condition, or any other element in the description of the goods.[2]

Between the shipper and the shipowners a bill of lading signed by the master is *primâ facie* but not conclusive evidence[3] of the facts stated in it.

[1] Parsons on Sh., vol. I., 186.
[2] Parsons on Sh., vol. I., 197.
[3] Bates *v.* Todd, 1 M. & Rob. 106.

It is not the contract, but only the evidence of the contract.[1] It stands on the footing of a written receipt not under seal; but as against an assignee for value, the owners are estopped by a statement therein of the rate of freight though merely nominal,[2] or that freight has been paid, provided such statement, at the time it was made, did not exceed the master's authority.[3] It may be corrected or contradicted by evidence of the real facts. But the onus of proving that it is not correct, and of proving the real state of facts, lies upon the shipowner.[4]

And even as between the *bonâ fide* indorsee or assignee of the bill of lading for value, and the shipowner, the same rule obtains, and the bill is not conclusive evidence of the facts stated in it, but may be corrected by evidence of the real facts.[5] The indorsee of a bill of lading sued the captain who had signed it for the value of four bales not delivered. The evidence was, that the goods were shipped by certain persons acting as agents for the actual shippers, and that when the goods were put on board there was a dispute with the mate as to the number of bales shipped. He made a memorandum of the

[1] Crookes *v.* Allen, 49 L. J. Q. B. 203.

[2] Mercantile and Exchange Bank *v.* Gladstone, Law R. 3 Ex. 233.

[3] Reynolds *v.* Jex, 34 L. J. Q. B. 251; Pickernell *v.* Jauberry, 3 F. & F. 217.

[4] Berkley *v.* Watling, 7 Ad. & E. 29; Hubbersty *v.* Ward, 22 L. J. Ex. 113; Campion *v.* Colvin, 3 Bing. N. C. 17; McLean *v.* Fleming, Law R. 2 H. L. 128; Meyer *v.* Dresser, 16 C. B. N. S. 646.

[5] Grant *v.* Norway, 20 L. J. C. P. 93; Jessel *v.* Bath, Law R. 2 Ex. 267; Howard *v.* Tucker, 1 B. & Ad. 712.

fact but by mistake put down in the bill of lading sixty-nine bales instead of sixty-five, and had since died. Sixty-five bales were delivered. Held that there was evidence to go to the jury that the misrepresentation as to the amount shipped was "caused wholly by the fraud of the shipper" within the terms of section 3 of 18 and 19 Vic., c. cxi.[1]

A bill of lading is only *primâ facie* evidence that the property is in the holder of the bill.[2]

The bill of lading being merely an acknowledgment by the master, is no evidence in an action on the policy without authentication; and even if authenticated by the master, it will not amount to sufficient proof of an insurable interest in the goods, without some further proof.[3]

Bill of lading in hands of consignee or indorsee for value.

A bill of lading in the ordinary form, and without qualifications being inserted by the master, would be conclusive against him under section 3 of the Bills of Lading Act, but a bill of lading containing a printed clause "weight, contents, and value unknown," with similar words written above the signature of the master, in the hands of a consignee for value, is not conclusive evidence against the master of the shipment of the goods mentioned in the bill of lading.[4]

This question was determined for the first time

[1] Valieri *v.* Boyland, 2 Asp. Mar. Law Ca. 336.

[2] The John Bellamy, Law R. 3, Adm. 129.

[3] Arnould on M. I., vol. 2, 1314; Haddow *v.* Parry, 3 Taunt. 303.

[4] Berkley *v.* Watling, 7 Ad. & E. 29.

in the case of W. Nicol and Co. *v.* J. S. Castle,[1] and in delivering judgment, Sir C. Sargent, C. J., said, "The question, 'is the bill of lading in the hands of the plaintiffs, consignees for valuable consideration, conclusive evidence as against the defendant of the shipment of 50 tons,' turns upon the construction to be put on the Indian Bill of Lading Act IX. of 1856. The English Act on the same subject, 18 and 19 Vict., c. cxi., of which the Indian Act is a literal copy, has come under the consideration of the English courts of law on several occasions, but never, so far as we are aware, except incidentally, on the point on which this case turns, namely, the liability of the master signing the bill of lading to a consignee for value under section 3 of the Act.

"Section 1 gives a consignee of the goods or indorsee of the bill of lading (to whom the property is intended to pass) the same rights of suit as if the contract had been with himself; and, therefore, in the present case, as the bill of lading does not amount to an admission by the master that fifty tons of coal were shipped on board, the plaintiff could not, as a simple consignee of the coal, recover under that section against the master, without proving that the fifty tons were actually shipped.

"Section 3, however, places a consignee of the goods, or indorsee, who has given value, in a far better position as regards the master or other person signing the bill of lading. It says that in their hands

[1] Vol. IX., Bom. H. C. Rep. 321.

the bill of lading, representing goods to have been shipped on board, shall be conclusive evidence of such shipment as against the master or other person signing the bill of lading, notwithstanding that such goods or some part thereof may not have been so shipped, unless the holder of the bill of lading shall have had actual notice, at the time of receiving the same, that the goods had not, in fact, been laden on board; and leaves only one ground of defence open to the person so signing the bill of lading to plead, namely, that the misrepresentation was caused without his default and wholly by the fraud of the shipper.

"The first important question, then, is, what was the amount of coal which this bill of lading represented as having been shipped? Did it represent to third persons who might deal with the shipper that the exact amount of fifty tons of coal had been shipped? If the written and printed words are reconcilable, as they must be taken to be for the purposes of this argument, we are at a loss to see on what ground it can be contended that the bill of lading, taken as a whole, represents to the public as a fact on which they may rely, that fifty tons of coal had been shipped. Undoubtedly the bill of lading commences by representing that there have been shipped on board the steamship 'Hutton' fifty tons of coal, but the 'representation' referred to in section 3 must, we think, mean the representation made by the whole instrument. This appears from the preamble,

which says, 'whereas it frequently happens that the goods in respect of which bills of lading purport to be signed, have not been laden on board, and it is proper that such bills of lading in the hands of a *bonâ fide* holder for value should not be questioned by the master or other person signing the same on the ground of the goods not having been laden.'

"Here, however, the bill of lading does not purport to be signed by the master in respect of fifty tons of coal exactly. The object is to protect the *bonâ fide* holder without notice, and to make those persons liable who have represented to him through the bill of lading that a certain amount of goods have been shipped. Here, however, the bill of lading gives him clear notice that the master, upon whose signature he is supposed to rely, does not admit that fifty tons were shipped. This conclusion follows irresistibly from the previous decisions as to the effect of the printed condition on the written words. If they are reconcilable and the bill of lading admits of reasonable and fair explanation, it cannot be said that the bill of lading was signed by the master in respect of fifty tons of coal. But it was said that the Act prevents the master from guarding himself against the effect of the written words, or, in other words, the object of the Act was to throw on him, as between himself and *bonâ fide* holders, the obligation of ascertaining the truth of the 'written words.' But this would be to put a construction on the Act far beyond

the object as stated at length in the preamble, and would, in our opinion, require distinct words to that effect—words which are certainly not to be found in this Act.

"This view of the Act is adopted by the Chief Baron and Mr. Baron Martin in the parallel case of Jessel *v.* Bath,[1] although it was not necessary to decide the question, as the action was against a person who had not signed, and who was held by the Court not to be bound by the person signing. They both, however, expressed an opinion that no action could have been brought on the bill of lading under section 3 of the Act, even against the person signing.

"We are of opinion, therefore, that this question should be answered in the negative."

Ship's agents cannot bind owner or charterer for greater quantity than shipped.

Jessel *v.* Bath[2] was an action to recover damages for non-delivery of the quantity stated in the bill of lading. The defendants were the charterers, and had ship's agents or consignees at the ports of call. It was the custom for a ship's agent or consignee to sign bills of lading instead of the master, and no difference was recognized in trade usage between the efficacy of his signature and that of the master. The defendant's agents at Genoa signed a bill of lading for manganese shipped in bulk and not weighed at the time of shipment, which described the manganese as of a certain weight, but contained in

[1] Law R. 2, Ex. 267.
[2] Ibid.

print the words "weight, contents, and value unknown." The plaintiff was assignee for value of this bill, and the whole of the manganese shipped was, on the arrival of the ship, delivered to him, but was found to be short of the weight stated in the bill. It was held that the defendants were not bound by the signature of their agents to a bill of lading for a greater quantity than was actually shipped, and it was stated that "at common law the defendants would not be liable on this bill, because, although Messrs. Barchi were their agents to conduct their business, they were not their agents to make an admission contrary to the fact by signing a bill of lading for a quantity they knew nothing of,[1] and that no change in this respect was made by the Bills of Lading Act (18 and 19 Vict., c. cxi.)"

Evidence of usage and custom admissible to determine effect of bill of lading.

The general rule adopted by courts of law in the construction of mercantile instruments is, that the construction should be liberal, agreeable to the real intention of the parties, and conformable to the usage of trade in general, or of the particular trade to which the contract relates.

The principle on which evidence of usage is admissible for such a purpose is, that the parties have not set down on paper the whole of their contract in all its terms, but those only which were necessary to be determined in the particular case by specific agreement, and which of course might vary infinitely, leaving to implication and tacit understanding all

[1] Coleman *v.* Riches, 24 L. J. C. P. 125.

those general and unvarying incidents which an uniform usage would annex, and according to which they must in reason be understood to contract, unless they expressly exclude them.[1]

If the parties in their contract have so expressed themselves as to exclude the usage, any evidence thereof is inadmissible, as the effect of that would be to contradict the manifest intention of the parties and the tenor of the written contract.[2]

Whenever the custom or usage sought to be proved is not inconsistent with the terms of the written instrument, such evidence is admissible to determine the effect of it.[3]

The custom of merchants, where such custom has been settled by judicial determinations, will be recognized without proof in courts of law.

In the case of Barnett *v.* Brandao,[4] Lord Denman said: "The law merchant forms a branch of the law of England, and those customs which have been universally and notoriously prevalent amongst merchants, and have been found by experience to be of public use, have been adopted as a part of it, upon a principle of convenience and for the benefit of trade and commerce, and when so adopted, it is unnecessary to plead and prove them. They are binding on all without proof; accordingly, usages affecting bills of lading are taken notice of judicially."

[1] Humfrey *v.* Dale, 26 L. J. Q. B. 137.

[2] Lewis *v.* Marshall, 7 M. & G. 729; 13 L. J. C. P. 193.

[3] Cuthbert *v.* Cumming, 11 Ex. 405.

[4] 6 M. & G. 630.

When evidence of the usage of a particular place is admitted to add to, or in any manner to affect, the construction of a written contract, it is admitted only on the ground that the parties who made the contract are both cognizant of the usage, and must be presumed to have made their agreement with reference to it. But no such presumption can arise when one of the parties is ignorant of it.[1]

Parol evidence of usage and custom was held admissible to explain the meaning of the word "days" in a bill of lading as working days[2]; "months" as meaning calendar months[3]; to fix the part of the month where the vessel was to sail "in the month of October"[4]; the meaning of the term "cotton in bales"[5]; the meaning of the word "freight".[6]

Sale of ship does not affect bills of lading signed before notice thereof.

Until the master receive notice of a change of ownership, he retains the powers conferred upon him by the original owners, so far as to bind the new owners by contracts for the carriage of goods entered into by him pursuant to his original instructions.

Kelly, C. B., in the Mercantile Bank *v.* Gladstone,[7]

[1] Kirchner *v.* Venus, 7 W. R. 457.

[2] Cochran *v.* Retberg, 3 Esp. 121.

[3] Jolly *v.* Young, 1 Esp. N. P. C. 186; Simpson *v.* Margitson, 11 Q. B. 32.

[4] Chaurand *v.* Angerstein, 2 C. B. 412; Leidemann *v.* Schultz, 14 C. B. 38.

[5] Taylor *v.* Briggs, 2 Car. & P. 525; Gorrissen *v.* Perrin, 27 L. J. C. P. 29.

[6] Peisch *v.* Dickson, 1 Mason 11, 12; Gibbon *v.* Young, 2 Moore 224; Lewis *v.* Marshall, 7 M. & G. 729, 743; 8 Scott N. R. 477.

[7] Law R. 3, Ex. 239.

said: "It would be impossible to see any end to the inconvenience, injustice, and breaches of contract which must follow, if, when a master has proceeded in command of his ship to some foreign port, having received instructions as to how he is to deal with the ship, what ports he is to proceed to, and what contracts he may make, every act which he may have done under the authority which he once possessed, may be treated as a nullity by reason of an unknown secret conveyance of the ship by her former owner. I think that the master was bound by all the acts, all the instructions, all the authorities which had emanated from the former owners, until the plaintiffs had given notice to the master that they had become the owners, and that any authorities derived, or instructions received, had ceased; and that until that notice the master was not bound to act except in the interests of his former owners. The bill of lading signed by him is therefore valid and binding."

On arrival the master must deliver bill of lading to the Customs' Collector.

The Indian Customs Act VIII. of 1878, sec. 58, requires the master of every vessel, on arriving at any customs port in India, at the time of making his application to have the ship entered inwards, if required by the Customs' Collector, to deliver to him the bill of lading or a copy thereof for every part of the cargo laden on board, and in case of non-compliance, the Collector may refuse to grant his application to enter the vessel.

Similarly the masters of all ships arriving in the

United Kingdom were formerly obliged by 16 and 17 Vict., c. 107, sec. 53, "to deliver to the Collector or Comptroller, if required, the bill of lading or a copy thereof, for every part of the cargo laden on board." This section of the Statute has been repealed by 39 and 40 Vict., c. 36, and is re-enacted by sec. 53 of this Act, omitting, however, the words relating to the production of the bill of lading.

Measure of damages for unreasonable detention of goods.

It is a settled principle that, whenever either the object of the sender is specially brought to the notice of the carrier, or circumstances are known to him from which the object ought in reason to be inferred, so that the special use may be taken to have been within the contemplation of both parties, damages may be recovered for the natural consequences of the failure of that object.[1]

Damages for a breach of contract must be such as may fairly and reasonably be considered as arising naturally,—*i.e.* according to the usual course of things—from such breach of contract itself, or such as may be reasonably supposed to have been in the contemplation of both parties at the time they made the contract, as the probable result of the breach of it.[2]

Cases may occur in which it is difficult to apply these principles, but there is no case in which it has ever been held that damages could be recovered for

[1] Simpson *v.* L. & N. W. R. Co., 45 L. J. Q. B. 182.

[2] Horn *v.* Midland Ry. Co., Law R. 8 C. P. 131, 137; s. c. 42 L. J. C. P. 60.

delay in the carriage of the goods on a long voyage by sea, where there has been what may be called a merely accidental fall in price between the time when the goods ought to have arrived and the time when they did arrive. The question, whether if there is undue delay in the carriage of goods on a long voyage by sea, it follows as a matter of course that if there has been a fall in the price of the goods between the time when they ought to have arrived and the time when they do arrive, damages can be recovered, was fully considered in the case of the Parana,[1] which vessel was of 1,372 tons gross and 1,027 net register, and 180 horse power nominal. The master chartered the vessel at Manilla to load a cargo there and at Ilo-Ilo, and to proceed therewith to London viâ the Suez Canal. In pursuance of the charter-party she took on board some parcels of hemp and sugar at Manilla, and having sailed to Ilo-Ilo, she then took in further parcels of sugar, but as the charterers were not able to supply her with a full cargo, it was agreed that she should be at liberty, on the homeward voyage, to call in at Singapore to fill up. She left Ilo-Ilo on the 24th July 1873, but owing to the defective state of the boilers, she was obliged, on the 30th of the same month, to put into Labuan for repairs. Thence she proceeded to Singapore, where she took in some cargo and a large quantity of coals, and effecting some further repairs to the boilers, she again proceeded on her voyage. On

[1] 3 Asp. Mar. Law Ca. N. S. 399.

the 18th August, owing to the state of the boilers, she was obliged to put into Acheen, and after effecting repairs, she again proceeded. On the 1st September she had to alter her course for Point de Galle, it being found that she could only carry 11 lbs. steam. She arrived in Point de Galle on the 4th September, and having completed her repairs, she left again on the 9th. On the 1st October she arrived at Acheen, where further repairs were done to her boilers, and again at Port Said, at Malta, and at Gibraltar, so that it was not until the 28th November 1873, 127 days after leaving Ilo-Ilo, that she arrived in the port of London. It was admitted that the boilers were in a bad condition, and that by reason thereof a very undue delay took place during the voyage. In an action brought by the assignee of certain bills of lading of goods (sugar and hemp) forming part of the cargo, to recover damages for loss of market in respect of the hemp, interest, and loss by drainage of sugar by reason of the unusual length of the voyage, Mellish, L. J., in delivering the judgment of the Court, said: "If goods are sent by a railway for sale at that day's market in Smithfield or Billingsgate, and by reason of a breach of contract on the part of the carrier they have not arrived in time for that market, no doubt damages for the loss of market may be recovered. So, again, if goods are sent for the purpose of being sold at a higher price than they are at other times, and if by reason of breach of contract they do

not arrive in time, damages for loss of market may be recovered; or, if the facts are known to both parties, or where it is known *a priori* that they will sell at a better price than if they arrived later. In this case it is only said that when the goods arrived in November they were likely to sell for less than if they had arrived in October, when the market was lower. It was argued that there could be no difference between the carriage of goods by railway and the carriage of goods by sea. But it appears to us that there may be a material difference between the two cases; when goods are conveyed by railway, if they are known to be conveyed for the purpose of sale at all, they are usually conveyed for the purpose of immediate sale, and if the cases are examined, I think it will be found that in all of them the Courts treated the question as if the goods were consigned for the purpose of immediate sale. No doubt if goods are consigned to a railway company under such circumstances, the railway company may be reasonably supposed to know that they are consigned for the purpose of immediate sale, and if by breach of contract on the part of the carrier they do not arrive in time to be sold when the owner intends them to be sold, that may be a ground for giving damages for what is called 'loss of market.'

"The difference between cases of this kind and cases of the import of goods from a long distance by sea, seems to me to be very obvious. In order that damages may be recovered we must come, I

think, to the conclusion, first, that it was reasonably certain that the goods would not be sold until they arrived; or, secondly, that it was reasonably certain that they would be sold immediately after they arrived, and that that was known to the carrier when the bills of lading were signed. It appears to me that nothing could be more uncertain than either of those two assumptions. Goods imported by sea may be, and are every day sold whilst they are at sea. The sale of goods 'to arrive' on transfer of bills of lading, with costs, bills, and insurances, is a common mercantile contract made every day. It seems to me that to give these damages would be to give speculative damages, to give damages when we cannot be certain that the plaintiff would not just as much have suffered if the goods had arrived in time, and I think according to the principle on which the Courts have acted in all speculative and uncertain cases of this kind, that damages ought not to be recovered." The Court held that the owner of the goods, or assignee of the bill of lading for the goods, was not entitled to recover, as damages from the shipowner, the difference between the market value of the goods when they ought to have been delivered, and the market value when they actually were delivered, but that the measure of damages recoverable in such a case was interest at the ordinary commercial rate on the value of the goods for the period of the delay in delivery.

PART II.

THE LEGAL EFFECT OF THE SEVERAL CLAUSES AND STIPULATIONS IN THE BILL OF LADING.

Introduction.

THE great impetus given to both export and import trade within the last few years, not only by the direct and less circuitous route viâ the Suez Canal, but by the daily increasing facilities with which commodities of every nature and description are transported from port to port, by the employment of steam-ships in the place of the old sailing vessels used in past years, has been attended with risks and dangers to the goods so conveyed which were unknown before.

The improved methods of loading and discharging the cargo, the necessarily short stay of the vessel in port, and the prosecution of a voyage made heedless of wind or even of weather, have all combined to render cargoes exposed to more than ordinary perils in transit, and consequently we find that the ingenuity and forethought of the shipowner have been exercised to the utmost in endeavouring to protect

himself from liability or responsibility, by the insertion in the bill of lading of conditions and exceptions from almost every possible, or probable, loss or damage that might arise. And owing to the ambiguous language and inconsistent provisions which are frequently to be met with in the bill of lading, much difficulty is experienced in determining the true and proper construction of the instrument.

Archibald, J., in one case said that "the exigencies of claim and liability have led to the gradual development of a document which has come at last to be a considerable puzzle." [1]

It will be seen, as we proceed with the consideration of the respective clauses, or exceptions of the bill of lading, that these are in effect based on and taken in conjunction with the charter-party.[2]

Recourse will therefore be made, in considering the legal definition and bearing of the various terms of the bill of lading, to such authorities and decisions as may by analogy or similarity of matter be capable of affording, by inferential reasoning, a fair and sound basis for guidance on the individual subjects.

The law as to bills of lading is not to be derived from the law relative to policies of insurance.[3] A policy of insurance is an absolute contract of indemnity from loss by perils of the sea. The fact that a loss is partly caused by things not distinctly perils

[1] Taylor and others *v.* The Liverpool and Great Western Co., 43 L. J. Q. B. 205.

[2] The San Roman, 41 L. J. Adm. 76.

[3] The Chasca, 44 L. J. Adm. 19.

of the sea does not prevent it coming within the contract. In the case of a bill of lading it is different, because there the contract is to carry with reasonable care unless prevented by the excepted perils.[1]

Lord President Inglis, in the case of Steel and Craig *v.* The State Line Steam-Ship Company,[2] said: "There is nothing to prevent shipowners stipulating, and shippers agreeing, that the ordinary liability of the shipowners shall be entirely discharged; and although in form they undertake to deliver in the like good order and condition, they shall not in effect be liable to do so. Conditions must be interpreted *contra preferendem;* on the other hand, there is another kind of construction applicable to a bill of lading, and which must not be subjected to a too critical verbal interpretation. Documents of this kind are never grammatically expressed, and just as little are they expressed with any logical precision or accuracy; and, therefore, we must be content to construe the language, not critically, but according to what is the apparent meaning of the parties."

In the case of Crookes *v.* Allen,[3] where several exceptions embodied in the bill of lading were relied upon as a defence, Lush, J., said: "The long list of excepted perils, and the much longer list of exemptions and qualifications, of which the clause in ques-

[1] Grill *v.* The General Iron Screw Collier Co., 35 L. J. C. P. 321; Law R. 1 C. P. 600.

[2] 4 S. C. 657.

[3] 49 L. J. Q. B. 202.

tion is one, and which seem designed to exonerate the shipowners from all liability as carriers, and to reduce them substantially to the condition of irresponsible bailees, are printed in type so minute, though clear, as not only not to attract attention to any of the details, but to be only readable by persons of good eyesight. The clause in question comes in about the middle of thirty closely packed small type lines, without a break sufficient to attract notice. If a shipowner wishes to introduce into his bill of lading so novel a clause as one exempting him from general average contribution, a clause which not only deprives the shipper of an ancient and well understood right, but which might avoid his policy, and deprive him also of all recourse to the underwriter, he ought not only to make it clear in words, but also to make it conspicuous by inserting it in such type, and in such a part of the document, as that a person of ordinary capacity and care could not fail to see it. It does not follow that a person who accepts the bill of lading which the shipowner hands him, necessarily, and without regard to circumstances, binds himself to abide by all its stipulations. If a shipper of goods is not aware when he ships them, or is not informed in the course of the shipment that the bill of lading which will be tendered to him will contain such a clause, he has a right to suppose that his goods are received on the usual terms, and to require a bill of lading which shall express those terms. Notwithstanding the concluding

sentence of these small-typed thirty lines, which says, 'In accepting this bill of lading, the shippers or other agents of the owner of the property carried, expressly accept and agree to all its stipulations, exceptions, and conditions, whether written or printed,' I should have thought it right if the stipulation in question bore the meaning contended for, to give the plaintiffs an opportunity of supplying, by means of an official inquiry, information as to the circumstances under which the goods were shipped, and the bill of lading was taken, and whether the special clauses of this remarkable document were brought to their notice, or were read by them before they accepted it."

A bill of lading made in England by the master of an English ship, is a contract to be governed and interpreted by English law.[1]

Where a ship was German, her master was German, and her charterers were German, but the charter-party as well as the bill of lading were in English with a proviso in German, and she took on board her cargo at Taganrog, and her charter-party provided for a delivery at a safe port in the United Kingdom or on the Continent between Havre and Hamburg, her port of call being Falmouth, Sir R. Phillimore held that the law to be applied to the execution of the contract under these circumstances was German, though the principles of the English and the German law would be pretty much the same.[2]

[1] Moore *v.* Harris, 45 L. J. P. C. 62.
[2] The Express, 41 L. J. Adm. 80.

In considering the rights and liabilities which are created by the bill of lading, in respect of goods which it alleges have been "shipped," it is necessary to apply a much more extended meaning to this term than the word itself imports. It is not to be construed literally that the goods stated in the bill of lading have been actually received on board the vessel. "Shipped"

The term "shipped" in the bill of lading, rather implies the delivery of the goods to the master or mate, or any of the owner's agents authorized to receive them either on board, alongside, or on the quay or beach, or into the ship's boats; and an acceptance by such parties of the custody of the goods for carriage renders the master and owners liable for their safe custody from and after such delivery. But to make the master liable the delivery must be either to himself, or to an officer or person who is authorized to receive them. The goods cannot be delivered to the crew at random.

Where the usage of the wharf is to deliver the goods on the wharf to the mate of the ship by which they are to be carried, then, if they are so delivered to the mate, the wharfinger's responsibility is at an end, and the master, and not the wharfinger, is liable if the goods are lost from the wharf before they are shipped.[1]

In the case of the British Columbia and Vancouver's Island Spar, Lumber, and Saw Mill Co., Limited, *v.*

[1] Cobban *v.* Downe, 5 Esp. N. P. C. 41.

Nettleship,[1] Bovill, C. J., told the jury that if the case was delivered alongside the vessel into the custody of the defendant's agents, the defendant was as much responsible for it as if it had been actually shipped; and it having been proved that the case of machinery was delivered to the mate on the quay, the shipowner was held liable for the loss.

And where the mate signed receipts for wine which was on the quay, and one of the casks was lost before it was put on board, the owners were held responsible.[2]

Although a bill of lading asserts that the goods have been shipped, and is evidence of that fact, there is nothing to prevent its being shown that the goods in fact were not shipped.[3]

"In good order and condition."

"In good order and well conditioned."

A bill of lading taken in the ordinary form that the goods have been "shipped in good order and condition" or "well conditioned," is *primâ facie* evidence that the goods were in that condition at the time of shipment; but the shipowner may show that the goods were injured or destroyed on the passage by reason of some intrinsic defect which was not apparent or easily to be ascertained, when the goods were shipped.[4]

If anything is delivered to be carried, it is the duty of the person receiving it to ask such questions about it as may be necessary, and it makes no dif-

[1] Law R. 3 C. P. 499.

[2] Fragano v. Long, 4 B. & C. 219.

[3] Berkley v. Watling, 7 Ad. & E. 38.

[4] Parsons on Sh., vol. 1, p. 188.

ference whether the goods are open to inspection or not; if he asks no questions, and there be no fraud to give the case a false complexion, on the receipt of the parcel he is bound to carry it as it is.[1] Hastings *v.* Pepper[2] was an action brought against the master of a vessel to recover the value of a glass bottle containing twenty pounds of oil of cloves. The receipt of the box containing the bottle on board the vessel was acknowledged, but the defendant contended that the breaking of the bottle was owing to its being insufficiently packed, and that the bottle itself was imperfect, and not well annealed. Shaw, C. J., said: "It may be taken to be perfectly well established that the signing of a bill of lading acknowledging to have received the goods in question 'in good order and well conditioned' is *primâ facie* evidence that, as to all circumstances which were open to inspection and visible, the goods were 'in good order'; but it does not preclude the carrier from showing, in case of loss or damage, that the loss proceeded from some cause which existed, but was not apparent, when he received the goods, and which, if shown satisfactorily, will discharge the carrier from liability. But in case of such loss or damage, the presumption of law is, that it was occasioned by the act or default of the carrier, and of course the burthen of proof is upon him to show

[1] Lebeau *v.* The General S. N. Co., 42 L. J. C. P. 1; Walker *v.* Jackson, 10 M. & W. 168; 12 L. J. Ex. 165.

[2] Cited in Parsons on Sh., vol. 1, p. 188 n.

that it arose from a cause existing before his receipt of the goods for carriage, and for which he is not responsible." It is not necessary for the consignee or owner of the goods to give evidence of negligence on the part of the master, unless the latter shows that the injury which the goods have sustained was occasioned by a cause which was within the exceptions, when the consignee would be at liberty to show that there was negligence so as to deprive the master of the benefit of the exceptions in the bills of lading.[1]

In the case of the ship "Martha," a quantity of sheet iron was found on delivery to be stained and rusted with wet. It was proved that the iron was well stowed, that the ship came in tight and dry, that the iron was taken on board in dry weather, and not exposed to the access of water. But the Court held this was not enough, for the burden was on the ship to show that the damage existed when the cargo was laden on board.[2]

In the case of Morton *v.* Cook[3] the bill of lading, which was signed by the master, contained the words, "I acknowledge to have received in my ship of you, Messrs. Robert (father and son) Guillemot, 2,000 sacks of wheat flour, weighing altogether 319,370 kilogrammes, the whole dry and in good condition, marked and numbered as in the margin, which goods I promise to convey in good

[1] Shetliff *v.* Scott, 22 Cal. W. R. Civ. R., p. 39.

[2] Cited in Parsons on Sh., vol. I., 189.

[3] Mit. Mar. R., 30th December 1865.

condition, saving the perils and accidents of the sea, &c. &c., to Liverpool." On discharging the cargo at Liverpool some portion of it was found to have been damaged by salt water, and another portion to have suffered from what was termed country or fresh water damage, that is, damaged before the flour was put on board. The action was brought to recover damages in respect of this latter portion. There was no evidence of any knowledge by the master that the flour when received on board had suffered from country or other damage. The plaintiffs claimed their right of action against the master under the provisions of sections 1 and 3 of the Bills of Lading Act as indorsees for value; and urged that being so, the statement in the bill of lading that the goods had been shipped "dry and in good condition" was conclusive evidence in an action at their suit against the master of the then condition of such goods; but on the above facts the Court found for the defendant, and dismissed the suit with costs.

But where the cargo has been stowed alongside of, or close to, other cargo, which by its nature is calculated to injure or affect it, the presumption will be that the cargo was shipped in good order and condition, and that the damage was occasioned by the improper stowage of the goods. For instance, where cocoanut oil was stowed alongside coffee, which latter article is liable to take in and retain the odour arising from anything with which it comes in contact; in an action for damage done to a large

parcel of bags of coffee, which it was alleged was strongly impregnated with the smell of rank Manilla oil, stowed in the same hold at the bottom of the ship, the master was held liable for the damage to the coffee, which it was found had been occasioned after shipment by bad stowage, though it was shown that other parcels of coffee in the same hold were uninjured, which, it was argued, would not have been the case had the damage actually arisen by contamination from the oil.[1]

The words "in good order and condition" only refer to the external condition of the package, and creates no contract with reference to its contents. But if the master qualifies the bill of lading by adding "contents unknown" or other similar words, he is accountable for whatever the box can be proved to have contained when put on board his ship.[2]

Where the steamer "Orchis" conveyed from London to Hong Kong for the plaintiff a box described in the bill of lading as containing "private effects," "contents unknown" being added by the master: on arrival the box was delivered apparently in good order and condition, but it turned out that the top, which had been nailed down, had been forced open and part of the contents abstracted. The plaintiff was unable to prove what was inside the box when put on board. It had been packed in Edinburgh, and it was just as

[1] Mit. Mar. R., 30th June 1866.

[2] The Prosperine *v.* Alasso, 22 L. T. Adm. 622; Clark *v.* Barnwell, 12 How. 272; 19 Curtis 131.

probable that it had been opened on the luggage van of the railway between that place and London as on board the steamer. It was held that the master could not be made responsible.[1]

"By A. B." (the shipper).

It must be stated in the bill of lading by whom the goods have been shipped; therefore, a document drawn up in the following terms was held not to be a bill of lading:—"Elmira, July 2, 1842, shipped on boat 'Occidental,' H. Banks, Captain, 52,900 feet white pine boards and plank to Albany." This was signed by the agent of the consignor and delivered to the Captain.[2]

In practice the mate passes his receipt to the holder of the shipping order, and makes out the same in his name, and the name of the person thus appearing on the mate's receipts as the shipper of the goods is that which is entered in the bill of lading.

The necessity of some person's name being inserted in the bill of lading as representing the shipper is obvious, though the bill of lading will not be affected as a negotiable document by the circumstance of the name of some person other than the actual shipper being mentioned, or even where the name is fictitious and has been inserted for a fraudulent purpose.[3]

A bill of lading without the shipper's name is very little more than a receipt for, or acknowledgment of,

[1] Mit. Mar. R., 11th August 1876.

[2] Parsons on Sh., vol. 1, p. 186.

[3] Gabarrow v. Kreeft, Kreeft v. Thompson, 44 L. J. Ex. 238.

the goods. It cannot be negotiated, and the ship-owner or charterer may, under certain circumstances, find it difficult, if not impossible, to recover their freight. Thus where P. shipped soap on board a vessel at London under the following agreement with the charterer, "15 tons boxes soap, 39*s*. per ton of 40 feet, payable here. J. L. and S.," which was endorsed on the back of one of the plaintiff's cards, and it turned out that Gray was the real shipper, and the bills of lading were granted in his name. The ship sailed without payment of the freight being made, and was shortly after lost, which fact was provided for in the contract, "freight being payable, lost or not lost." The plaintiff demanded freight first from P. and then from Gray, but the latter becoming insolvent, an action was brought against P., and it was held that P., under the contract, was liable to pay the freight irrespective of any liability on the part of Gray to do so.[1]

By 39 and 40 Vict., c. 36, sec. 52, "the captain or other officer (having the charge of any ship having commission from Her Majesty, or from any foreign State) on arrival at any port in the United Kingdom, having on board any goods laden in ports beyond the seas," under a penalty of £100, shall furnish the Collector or Comptroller of Customs, *inter alia*, with the name of the respective shippers and consignees of the goods.

"On board." "In or upon."

The bill of lading acknowledges the goods to be

[1] Lidgett *v.* Perrin, 2 F. & F. 763.

on board before it is signed. But if the master sign bills of lading before the goods are on board, or have been delivered to some one authorized to receive them on the ship's account, through inadvertence or otherwise, upon the faith and assurance that they are at hand, as if they have been deposited on the wharf ready to be shipped, or in the shipowner's warehouse, or in the shipper's own warehouse, and they are never shipped, the owners are not estopped from showing this fact in a suit brought against them for non-delivery by *bonâ fide* indorsees of a bill of lading. As the master has no authority to sign bills of lading for goods not received, his doing so would be a fraud for which the shipowners would not be responsible, though the master might be.[1]

18 and 19 Vict., c. cxi., after reciting that "whereas it frequently happens that the goods, in respect of which bills of lading purport to be signed, have not been laden on board, and it is proper that such bills of lading in the hands of a *bonâ fide* holder for value should not be questioned by the master or other person signing the same, on the ground of the goods not having been laden as aforesaid," now enacts that "every bill of lading in the hands of a consignee or indorsee for valuable consideration representing goods to have been shipped on board a vessel, shall be conclusive evidence of such shipment,

[1] Parsons on Sh., vol. 1, p. 187 n; Hubbersty *v.* Ward, 22 L. J. Ex. 113; Coleman *v.* Riches, 24 L. J. C. P. 125; Lickbarrow *v.* Mason, 1 Sm. L. C. 705, s. c. 2 T. R. 63.

as against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the bill of lading shall have had actual notice, at the time of receiving the same, that the goods had not been in fact laden on board: Provided, that the master or other person so signing may exonerate himself in respect of such misrepresentation by showing that it was caused without any default on his part and wholly by the fraud of the shipper, or of the holder, or some person under whom the holder claims."

This provision only applies to persons who have actually signed bills of lading. Therefore owners who have not signed are not concluded by the statements in it, any more than they were before the statute.[1]

"Ship." "Steam-ship."

By the Merchant Shipping Act of 1854, 17 and 18 Vict., c. 104, s. 2, "ship" includes every description of vessel used in navigation, not propelled by oars.

The same definition is given to the word by the Admiralty Court Jurisdiction Act, 1861, 24 Vict., c. 10.

The meaning of the term "steam-ship" is that the principal motive power shall be the power of steam, and not that of a sailing vessel; but where it is convenient, as it often is, for a steam vessel to use sailing power instead of steam power when the wind happens to be favourable, it is not necessary that

[1] Meyer *v.* Dresser, 16 C. B. N. S. 646; 33 L. J. C. P. 289.

the vessel should be at all times, and under all circumstances, propelled by steam.

If it is stated in the bill of lading that the vessel is a steam-ship, and it turns out that she is an auxiliary screw steamer, owing to which circumstance she made an unusually long voyage, an action will lie for the detention of the goods and their non-delivery within a reasonable time. This question came before the Courts in 1872, in the case of the "Hibernia,"[1] which was described as a steam-ship in the bill of lading "with liberty to call at any ports in or out of the route, to receive and discharge coals, &c. &c. and to tranship the goods by any other steamer." The vessel was an auxiliary screw, and was propelled by steam during a small part of the voyage only, from Singapore to London, which lasted 135 days, the usual voyage by steamer being about 60 days. The judges were unanimously of opinion that the contract implied that the voyage should be performed wholly or principally by steam, and it was stated, that supposing an auxiliary screw steamer would have satisfied the terms of the contract, it would have involved the use of the auxiliary screw power so far as it was reasonably possible.

Both by the English Statutes[2] and the Indian Acts[3] "ship" is defined "to include every descrip-

[1] Fraser *v.* The Telegraph Construction and Maintenance Company, 41 L. J. Q. B. 249.

[2] 24 Vict., c. 10, s. 2. [3] VII. of 1880.

tion of vessel used in navigation not propelled by oars."

In the case of the "Rachel,"[1] which was a fishing coble, 24 feet long, 7 feet beam, 10 tons burthen, and drawing about 18 inches; it had about 8 feet of deck forward, with a main and mizen mast and a bowsprit to ship and unship, and a jib, mainsail, and mizensail. The masts were easily removeable and the vessel was fitted with four oars, to be used when occasion required, viz., in harbour or in shoal water; such vessels frequently went out twenty miles to sea.

The coble having been sunk in a collision with the S. S. "Thames," upon official inquiry, instituted under the Merchant Shipping Acts, 1854 and 1862,[2] it was argued that the coble was not a ship. But the Court of Queen's Bench on a writ of *certiorari* being applied for, held that "whether a ship is propelled by oars or not, it is still a ship, unless the words 'not propelled by oars' exclude all vessels which are ever propelled by oars. Most small vessels rig out something to propel them, and it would be monstrous to say that they are not ships. The meaning of the word 'ship' in this Act is that every vessel that substantially goes to sea is a ship."

The terms "ship" and "vessel" have the same meaning, but it has never been held that the word "ship" included a vessel propelled solely by oars.

[1] Exparte Ferguson, Law R. 6 Q. B. 291.

[2] 17 & 18 Vict., c. 104; 25 & 26 Vict., c. 63.

Thus lighters or barges do not fall within the definition of ship.[1]

Name of Ship.

The correct insertion in the bill of lading of the name of the vessel in which the goods are shipped, is so essentially important that it should not be overlooked or omitted. In the case of a charter-party; the vessel named therein is so engaged to the charterer that he may refuse to load another instead, and the withdrawal of the ship would be a breach of contract for which an action will lie. For a person hiring a vessel under a charter-party does so, not merely from a wish to have his goods taken to a particular place, but upon a careful choice of the vessel itself as the one best adapted for his purposes.[2]

In many insurance offices the production of the bill of lading is required in order to fill in the policy for the goods shipped, and if the name of the vessel does not appear on the face of it, or is so written as to be unintelligible, no ordinary insurance could be effected.

As the nature of the risk depends very materially on the character of the ship employed, it is a matter of great importance to the underwriter to know the name of the ship in which the goods are on which insurance is required. Hence, as a general rule, in all insurances, whether on ship or goods, the name of the ship intended to be employed on the voyage, if

[1] Everard *v.* Kendall, Law R. 5 C. P. 428.

[2] De Mattos *v.* Gibson, 28 L. J. Ch. 502.

known to the assured, ought to be accurately inserted in the policy. As, however, the name of the ship is only required to be inserted in order that the underwriter may really know what ship is intended to be employed, if he can be proved to have had this knowledge, an error in the name of the ship will not vitiate the policy.[1]

In the event of the goods being lost or damaged, and hence a claim made upon the insurers, the production of the bill of lading is necessary before payment can be obtained, and should it then appear that the name of the vessel has been omitted, or is so inaccurate as to be incapable of identification, the insurers do not in practice admit such claim.

The shipowner, or the master as his agent, is bound under his contract in the bill of lading, or charter-party, to carry the goods to their destination, if not prevented from doing so in his own ship by some event which he has not occasioned, and over which he has no control, and he is therefore justified in hiring another vessel for this purpose. There seems to be much disagreement in foreign ordinances and jurists on the point whether or no he is bound to tranship, or whether, having contracted only to carry in his own ship, he is not absolved from further prosecution of the enterprize by the *vis major*, which prevents his accomplishing it in the literal terms of his undertaking. All authorities,

[1] Arnould on M. I., vol. I., p. 26.

however, are in unison to this extent, that the master is at liberty to procure another ship to transport the cargo to the place of destination.[1] Where the bill of lading contains a clause that the goods are to be taken delivery of after a certain number of days after arrival of the ship, or demurrage will be payable, it is the duty of the holder of the bill of lading to watch for the arrival of the vessel, and notice to him by the shipowner is not necessary; he will be liable for demurrage unless he can show that after using reasonable diligence he had been deceived as to the time of the ship's arrival, from her being entered at the Custom-house by a different name from that given to her in the bill of lading.

Thus where the German ship "Die Treue" was denominated in the entry at the Custom-house at London as "The Treue," and the difference in the name was established, but it did not appear that the defendant, who was indorsee of the bill of lading, had made the proper searches at the Custom-house, he was held liable in an action for demurrage for not unloading her within the time after arrival specified in the bill of lading.[2]

"Whereof (A. B.) is master for the present voyage."

The mention of the name of the master of the vessel in this part of the bill of lading is not considered material, and its omission does not in any way affect the contract contained in it, which is made by the party signing the bill of lading, who

[1] Shipton *v.* Thornton, 9 Ad. & E. 314.

[2] Harman *v.* Clarke, 4 Camp. 159.

may be either the master or other agent of the shipowner; and we therefore find the master's name frequently omitted from this document. In case of the death, insanity, desertion, or absolute incapacity of the master at sea, the first mate succeeds to the command as a matter of course,[1] and will be entitled to a master's wages from the time he assumes command, as it is his duty to take upon himself the position of master with its attendant authorities, duties, and responsibilities.[2] And where in a foreign port the necessity arises and the owners cannot be communicated with, if done in good faith, a new master may be appointed or another substituted in the place of the one originally in command,[3] either by the agent of the owner,[4] by the consignees of the cargo, by the consignor of the cargo,[5] by the furnishers of the homeward cargo,[6] by a foreign merchant, to whom the prior master had committed the vessel as agent for the owners,[7] or by a consul or vice-consul at the port,[8] or even by a captain of the Royal Navy in actual command at the station.[9] In policies of insurance it is no implied condition that

[1] The Tecumseh, 3 W. Rob. 148.

[2] Hanson v. Royden, Law R. 3 C. P. 49.

[3] The Alexander, 1 Dods. Ad. Rep. 278; Story on Agency, s. 36, 120.

[4] The Kennersley Castle, 3 Hagg. 1.

[5] The Rubicon, 3 Hagg. 9.

[6] The Rubicon, 3 Hagg. 9.

[7] The Tartar, 1 Hagg. 9.

[8] The Zodiac, 1 Hagg. 320.

[9] The Eliza Cornish, 17 Jur. 738.

the master should be correctly named in them, or that the same master should continue throughout the voyage.[1]

The master as such is master only for the voyage which is originally named, and on which the vessel sails. Everything out of this voyage is beyond his scope as captain; therefore, where he has sailed to a foreign country on a particular voyage, and bound to particular ports, he has no authority as master to agree to the substitution of another voyage in the place of the one agreed upon between his owners and the freighters.[2]

"Lying in the port of." "Lying in or off." "Now riding at anchor in."

In cases where the risk upon ship and goods either begins upon the loading at one port, or ends upon their discharge at another port, the meaning of the word "port," as used in the policy, must be ascertained by admitting parol evidence to show what meaning and extent in the general understanding of the mercantile world is attached to the word port as applied to the place where, by the policy, the risk is made to begin or end; and although the mercantile sense attached to the term may give the port in question a greater or a less extent than its legal or political limits, the mercantile sense, and not the legal import of the word, prevails. Thus, although Llanelly is, legally speaking, considered to be a part of the port of Caermarthen, in a policy of insurance "at and from Caermarthen," those words mean, in a

[1] Arnould on M. I., vol. I., p. 226.
[2] Burgon *v.* Sharpe, 2 Camp. 529.

mercantile sense, the town and port of Caermarthen [1]; and the policy does not attach to goods loaded at Llanelly.

It is not at all necessary to the definition of "port" in the sense in which that word is used in policies, that it should be an artificial harbour shut in with regular moles or piers. If it be a natural basin protected by a headland, or even an open roadstead, provided it be the usual and sole place of loading and unloading, it will be sufficient; and this will be especially the case if it be provided with all the usual machinery and appendages of a harbour.

Thus in one case the Court of King's Bench held that the expression "to any port or ports whatsoever" in a time policy, ought to be construed the same as "place or places," and could protect the ship while anchored in an open roadstead, that appearing to be the usual place for loading and unloading goods at the place where the loss occurred.[2]

"And bound for."

Where bills of lading have been signed for goods which have been laden upon a vessel to be carried on a particular voyage, the contract is that the same should be carried in the ship upon that voyage for freight, and this contract cannot be set aside without the consent of both parties to it.[3]

Thus where goods were shipped at London and bills of lading for the same had been signed by the

[1] Constable *v.* Noble, 2 Taunt. 403.
[2] Cockey *v.* Atkinson, 2 B. & Ald. 460.
[3] Tindall *v.* Taylor, 24 L. J. Q. B. 16.

master making them deliverable at Lisbon, and the merchant afterwards sought to change the voyage to Gibraltar, Lord Ellenborough said, "After the freighter's order to the captain to go to Lisbon, and the latter had received on board goods and executed bills of lading for that place, it was not competent for the freighter to countermand that order; he could not capriciously change the destination of the vessel without recalling the bills of lading, or at least offering sufficient indemnity to the captain against them.[1]

In the case of Bahadoor *v.* The British India Steam Navigation Company,[2] which was an action for non-delivery per S.S. "Goa" of four bales of piece-goods at Cuttack, it appeared that the bill of lading contained the words "Calcutta to False Point for Cuttack." It was shown in evidence that Cuttack, a place eighty-four miles distant from False Point, was approached partly by river and partly by canal, and it was alleged was part of the port of False Point, the use of which latter place was only commenced in 1876 during the Orissa famine; that there were no houses, stores, wharfs, or godowns, and no place to land goods, or persons there to receive them. The defendants were in the habit of transhipping the goods at False Point for Cuttack in boats either belonging to or used by them, for which a separate charge was made on the consignees. It was held that the defendants were not bound under the bill of lading

[1] Davidson *v.* Gwynne, 12 East Rep. 389.

[2] See Mit. Mar. Reg., 30th August 1878.

to carry the goods further than False Point, and were not responsible for any subsequent loss.

It has been held that a vessel anchoring off Atcheepore cannot be said to have arrived at the port of Calcutta.[1]

The bill of lading must be construed, like other contracts, according to the intention of the parties; and usage of trade is always presumed to be within the knowledge of the parties, and contracts to proceed from one port to another are supposed to be made in reference to it. Therefore, in an action against the defendant, the owner of a sloop, for a loss sustained by the plaintiff, in consequence of a deviation by the master, the defence was that the sloop was a general coasting vessel from New York to Norfolk and other places on the Chesapeake, and rivers running into that bay; it was the usage of such vessels to take freight for several ports, stopping at the first port, and passing on to the others successively, leaving the goods taken for each and taking in other goods; this usage was general, and public evidence of usage being offered, and the plaintiff's knowledge thereof proved, the Court held that the *primâ facie* intention of a direct voyage was subject to the contract which was controlled by the usage so known and established.[2]

If the goods are not delivered to the consignees at the place named in the bill of lading, and the

[1] Potter v. Gentle, Bourke's Rep. 41.

[2] Ang. on Car., s. 179.

owners of the goods obtain delivery of them at a port other than that specified in the contract, and not from the master but from third parties, into whose possession the same have come, not through any peril of the sea, but from the fraud and misconduct of the master, the latter will be liable in damages to the consignees.

Thus where battens were shipped on board the "Princess Royal," to be taken from Elsinore to Hartlepool, and on the voyage she was improperly injured and abandoned by the master, who was also owner of the vessel, and was subsequently found and taken into Middlesborough by the salvors, to whom the consignees had to pay a large sum to obtain their cargo; they were held entitled to maintain an action against the master and owner for recovery thereof.[1]

"And Or."

It occasionally becomes necessary in certain trades to designate more than one port in the bill of lading as the port of discharge, and provision is made for this by the insertion of the words $\frac{\text{and}}{\text{or}}$ between the ports mentioned, and where these words occur, they imply a choice of a port from several ports, but the master is only bound to go to the one finally determined upon.

"Viâ the Suez Canal."

These words are now almost invariably to be found in the Eastern Trade bills of lading, and the voyage is thereby specially restricted to this route and no other. The only instance in which the deviation from a voyage limited by words of this nature has come under

[1] The Princess Royal, 39 L. J. Adm., 45.

judicial notice is that of Hand *v.* Baynes,[1] where the defendant, who was the owner of a line of vessels engaged in transporting goods from Philadelphia to Baltimore, received certain goods belonging to the plaintiff on board of one of his vessels, and gave a receipt in the following words: "Received on board of Hand's line for Baltimore *viâ* Chesapeake and Delaware Canal, from J. B. (the plaintiff), one hundred slaughter hides on deck, which I promise to deliver to J. D. at Baltimore, the dangers of the navigation, fire, leakage, and breakage excepted." The vessel left Philadelphia, and on arriving at the mouth of the canal, the captain was informed that the locks were out of order, and that he could not be allowed to pass through the canal. He then proceeded down the bay and out to sea, with the intention of going round to Baltimore, but in a gale of wind the vessel struck on a shoal, and with the cargo was totally lost.

It was held that the contract was a contract to carry the goods to Baltimore through the canal, and that the circumstances did not excuse the deviation from that route; that by an alteration of the voyage the shipper was exposed to risks which he would not have voluntarily encountered; that a voyage by sea required vessels of a different description, differently found, and differently manned; and although the shipper might have been willing to encounter the peril in a vessel adapted to the trade, it did not follow that he would risk his property in

[1] 4 Whart. 204, cited in Ang. on Car., s. 177.

a vessel whose ordinary route was through the canal. When the master discovered the impediments to the prosecution of the voyage, through the route called for in the contract, his duty, the Court held, was plain; he had one of two courses to pursue: to remain in a place of safety at the mouth of the canal, or in some convenient and safe place in the neighbourhood, until the obstructions were removed, or he should have returned and informed the owners and shippers of the impracticability of proceeding through the canal. The legal effect of the contract, the Court held, was an engagement to carry and deliver the goods at Baltimore in a reasonable time, and what would be a reasonable time must be determined under all the circumstances, with a view to the condition of the canal, the season of the year, the state of the weather, and such other matters as might enter into the question. But, said the Court, where the contract is express to deliver goods in a prescribed time, no temporary obstruction, or the impossibility of complying with the engagement, arising from the condition of the locks on the canal, or any other cause, would be a defence to a suit for a failure to perform the contract. The Court was further of opinion that the clause in the receipt "the dangers of the navigation," did not apply to dangers caused by the canal's being, by inevitable accident, rendered impassable; and that occasional interruptions of trade arising from breaches in canals or other accidents are inconveniences, but in no sense

could they be considered as dangers of the navigation, coming within the exception.

"Or so near thereunto as she might safely get."

It has been long established that where a vessel is bound to a particular port, "or so near thereto as she can safely get," this must be taken to mean some place "within the ambit" of the port, though she may not be able to enter it,[1] and it has been held that the stipulation to proceed to such a place, or so near thereto as the vessel can safely get, necessarily comprehends her safety also in coming away when loaded, and justifies the vessel in crossing the bar at the harbour entrance with what cargo she can carry in doing so, and lying to outside for the rest of her lading.[2]

But it was held that a vessel which was bound to Galatz, or so near thereto as she could safely get, was not justified by this provision in proceeding to Odessa instead, notwithstanding the water on the bar at the mouth of the Danube had been too low for many weeks to allow her to cross.[3]

A ship chartered to take a cargo from Alexandria to a "safe port" in the United Kingdom or the Continent, "or as near thereto as she can safely get, and lie afloat at all times of the tide, and deliver the same and so end the voyage," was ordered to Glasgow, and on her way to that port she brought up off the "Tail of the Bank," an open channel in the river

[1] Metcalfe v. The Britannia Iron Works Company, 45 L. J. Q. B. 840.
[2] Shield v. Wilkins, 19 L. J. Ex. 238.
[3] Schillizi v. Derry, 24 L. J. Q. B. 196.

Clyde off Greenock, twenty-two miles below Glasgow. The water at Glasgow was not such as to enable the ship to lie afloat there at ebb-tide; the shippers therefore lightened her at the Tail of the Bank of part of her cargo. This is customary in such cases in the Clyde (the words "according to the custom of the port" in the printed form of the charter-party coming before the words "and deliver the same" had been struck out before the instrument was signed). The ship, after being lightened, was ordered up to Glasgow to deliver the residue of her cargo there.

The master took her up under protest, and discharged the rest of the cargo, and then, counting his lie days as beginning at the Tail of the Bank, he claimed demurrage and raised an action in the Sheriff's Court, which was finally determined by the First Division of the Court of Session. There it was held (Lord Deas dissenting) that there was no right to demurrage, as the Tail of the Bank was not to be deemed the port of discharge within the meaning of the charter-party. The Lord President, in delivering judgment, chiefly relied on the reasonableness of what had been done as the kind of performance that was contemplated by the parties to such an instrument, and indicated his opinion that, if the lightening had extended to half the cargo (*a fortiori* if more), his decision would have been the other way.[1]

[1] Hillstrom *v.* Gibson, 8 Sess. Ca., p. 463; 21 L. T. 302; Ford *v.* Cotesworth, Law R. 4 Q. B. 127; Law R. 5 Q. B. 544.

It cannot be laid down as an inflexible rule that when a ship has got as near to the port as she can get and the only impediment to proceeding further is overdraught, the master is under all circumstances entitled to consider the voyage at an end. He is bound to use all reasonable means to reach the port. The words "as near thereto as she can safely get" must receive a reasonable, not a literal, application; the overdraught may be such, and the cargo so easily dealt with, as that the surplus may be removed and the ship sufficiently lightened without exposing her to extra risk or the owner to any prejudice, and without substantially breaking the continuity of the voyage; and in such a case, if the consignee is at hand to receive the surplus cargo and so relieve the overdraught, it would be the duty of the master to lighten the ship and proceed to the port. This is the principle laid down in the case of Hillstrom *v.* Gibson.[1]

So where by a charter-party it was agreed that a ship should load a full cargo and proceed to a safe port within specified limits, "or so near thereto as she might safely get," the port to be named on signing bills of lading, and the cargo to be brought to and taken from alongside at merchants' expense. The master signed bills of lading for delivery of the cargo at Koogerpolder in Holland, a port which is situated some distance from the sea up a canal, to which port the ship had been ordered.

[1] 8 Sess. Ca. 463.

In the margin of the bill of lading was inserted the rate of freight and the words "and all other conditions as per charter-party." The ship duly arrived at Nieuwediep, which is at the mouth of the canal, and it was impossible that she could proceed further towards K., because her draught was 19½ feet, and the depth of the canal about fifteen feet only. The plaintiffs, before the ship's arrival at N., had written to ask the defendants what course they proposed to adopt, alleging that N. was as near to K. as the ship could safely get. The defendants in reply alleged that the plaintiffs had undertaken to deliver at K. as a safe port, and that they should not interfere. They declined to make any arrangements for taking delivery of any part of the cargo at N. Thereupon the master, on arriving at N., unloaded so much of the cargo—about one-third of the whole—as would admit of the ship passing into the canal, and sent that portion by lighters to K., proceeding thither with the rest in the ship. The action was brought by the shipowners to recover pilotage, harbour dues and other expenses of going into port, and demurrage. The Court was of opinion that the bills of lading had not the effect of altering the contract so as to bind the owners, as against the charterers, to deliver at the port of K., and that the master had no authority so to alter the contract if he had intended to do so, but that he had signed the bills of lading in the form presented to him in compliance with, and in order to carry out, the terms

of the charter-party. The only effect which could be given to the bills of lading as between these parties was, to preclude the plaintiffs from objecting that K. was a safe port, and to bind the plaintiffs to the same extent as and no further than if K. had been named in the charter-party as the port of discharge, and it was held that under the circumstances the master was justified in considering the voyage to be at an end at the mouth of the canal, and in treating it as the place of discharge, and that the plaintiffs were therefore entitled to recover.[1]

"A safe port" being stipulated for, the words are not satisfied by the natural safety of the port named, if the vessel would be exposed to confiscation or capture upon entering it.[2]

Where the cause has been physical, it has been often decided that if the obstacle was only temporary, it was not, however complete for the time, sufficient to enable the shipowner to insist on the substituted or alternative place of delivery.[3] The term always used has been that the obstruction must be permanent, and the provision in a charter-party that a ship is to be brought to a particular place, "or as near thereto as she may safely get," refers to the ship being prevented from getting to her primary destination by any permanent obstacle other than an

[1] Capper & Co. *v.* Wallace, 49 L. J. Q. B. 350.

[2] Ogden *v.* Graham, 31 L. J. Q. B. 26; The Teutonia, Law R. 3 Adm. 394; Law R. 4 P. C. 171.

[3] Schillizzi *v.* Derry, 4 El. & Bl. 875; Bastifell *v.* Lloyd, 1 Hurl. & C. 388.

accident of navigation, not merely by an obstacle endangering her safety, and if the master brings his ship as near as she can safely get to the place named for the discharge of his vessel, and he is prevented from going to the place itself by reason of some permanent obstacle, he would be entitled to recover demurrage and damages for detention.

Where a cargo of railway iron was shipped under charter to be carried from M. to Taganrog, "or so near thereto as she might safely get," and by the bills of lading and charter-parties it was to be delivered at the port of T. On arrival on the 17th December at Kertch, thirty miles short of T., the master found that further navigation was impossible owing to the ice, and that the port of T. would not be open again until April. He, therefore, notwithstanding express notice from the charterers at T. not to do so, discharged the cargo at K., the nearest port to T. to which he could safely get, and placed it in the charge of the custom-house authorities and left without any intention of returning or carrying on the cargo to T., which had been taken possession of by the consignee's agents under the bills of lading. It was said in judgment that there was no pretence for saying that Kertch was within the ambit of Taganrog, and Coleridge, C. J., remarked, "It was clear that the obstruction of the port was a temporary one, such as must be incident to every autumnal contract of this nature, and common sense revolts against the idea that in particular instances

when the contract relates to a sea liable to be frozen, the words 'at that time,' or 'then and there,' are to be inserted after 'as near thereto as the ship can safely get.' It would astonish mercantile minds if such words were, and there is no authority for saying that they should be, inserted," and the suit, which was brought by the shipowners against the charterers for recovery of freight, was dismissed.[1]

The question as to the effect of a vessel being prevented from reaching her named place of discharge by other than physical causes, first came before the English Courts in 1879.

By a charter-party made between the owners of the "Euxine" and a London merchant, it was stipulated that the steamer "E" should load a cargo of deal timber in the Baltic and proceed to the London Surrey Commercial Docks, "or as near thereunto as she might safely get," ten lay days being allowed for the discharge. The S. C. Docks were private docks adjoining the port of London, and the defendant applied to the owners of the docks for a berth for unloading the ship, but was unable to obtain one in consequence of the crowded state of the docks. The plaintiffs brought the ship to London and applied at the dock gates for admission, but were refused, and accordingly moored the ship at the nearest safe place. The defendant made no other arrangement for unloading the ship, and the plaintiffs

[1] Metcalfe *v.* The Britannia Iron Works Co., 45 L. J. Q. B. 837, s. c. 46 L. J. Q. B. 443.

ultimately themselves unloaded the ship by lighters into the S. C. Docks, and claimed demurrage and damages for the detention of the ship. The plaintiff was held entitled to recover, as the vessel had been prevented from entering the said docks solely by the action of the proprietors of those docks, and that as the causes of the refusal, and the refusal would have lasted for several months, the plaintiffs were prevented from getting their ship to its destination by an obstruction and disability of such a character that it could not be overcome by the shipowner by any reasonable means except within such a time as, having regard to the object of the adventure of the shipowner and charterer, was a matter of business wholly unreasonable.[1]

A decision similar to the above had been given in Scotland in 1877, in a case where a ship was chartered to load a cargo of scrap iron and therewith to proceed to G., or "so near thereto as she may safely get." On 10th September she arrived at G., but the docks were full. On the 12th she was anchored off the entrance of one of the docks, where it was proved that ships used to be unloaded of similar cargoes by means of lighters, but there had been no practice as to scrap iron. On the 13th, the master intimated he was ready to discharge, but the discharge did not commence until the 22nd, and was completed on the 28th September, when the vessel had been removed into the docks. Held, that

[1] Nelson v. Dahl, Law R. 12 Ch. D. 568.

demurrage was due from the 14th to the 28th September. Per Lord President (Inglis): "There is no difficulty in the rule of law, which is recognized both here and in England. A vessel, where she undertakes to go to a certain port, does not fulfil her obligation unless she goes either to the appointed place of discharge, or to an usual place of discharge. I am of opinion that the obligation in this case was fulfilled, and that the charterers, though they desired to get the vessel into the railway dock for the purpose of discharging on to trucks, could not reasonably refuse to take delivery where the ship lay, when the result was to cause delay."[1]

Calling at intermediate ports.

Provisions respecting the calling, touching, or staying at intermediate ports, are to be met with in almost every character and form in bills of lading, especially in those used for the carriage of goods by steam-vessels, by the insertion of clauses similar to the following:—

"With liberty to call and receive cargo and passengers at."

"With liberty to call $\frac{\text{and}}{\text{or}}$ receive $\frac{\text{and}}{\text{or}}$ land cargo $\frac{\text{and}}{\text{or}}$ passengers at G. and M., and any other ports whatever and in any rotation."

"With liberty to call at any port or ports in or out of the customary or advertised route in any order; to receive and discharge coals, cargo, and passengers; to land, re-ship, or tranship, or forward the within or any other

[1] Bremner v. Burrell & Son, 4 S. C. 934.

goods by any other conveyance, vessel, or vessels, and for any other purposes without being deemed a deviation."

These clauses have been interpolated into bills of lading from policies of insurance, and holders of bills of lading containing these clauses, should, at the time of insuring their goods, require the insertion of a clause in the policy defining the voyage, "with liberties as per bill of lading."

With the exception of exonerating shipowners from losses occasioned by delay in the voyage, these clauses are of but little practical importance as between the shipper and shipowner.

There is no reported case in which the liability of the parties under these clauses in the bill of lading has been determined, but their meaning and legal effect with reference to policies of insurance are now well determined and understood; and as the shipper is mainly affected in respect of his insurance on the goods by these clauses, it may not be out of place to consider the principles upon which the various decisions on this subject are based.

"A port" implies any harbour which vessels can enter, and where they can remain in safety.

"A port of entry" is a port at which a Custom-house is established.

Custom and long usage have prescribed in almost all voyages a certain course of navigation, as the safest, most direct, and expeditious mode of proceeding from one of the termini to the other: the course

thus prescribed by usage is the lawful course of the voyage contracted for in the bill of lading, and insured against; and being a matter of general mercantile notoriety, will be presumed to have been foreseen and contemplated by the parties to the contract at the time of entering into it. The underwriter agrees to indemnify the assured upon the condition universally implied, that the assured will strictly pursue the regular and customary course of the voyage insured, and carry it to its termination with all safe, convenient, and practicable expedition, and the underwriter will be freed from his liability from the moment of any failure to carry out this condition.

This tacit understanding not to depart from the lawful course of the voyage insured, is technically called an implied condition not to deviate; and a deviation in the legal sense of this term may be defined to be any unnecessary or unexcused departure from the usual course, or general mode of carrying on the voyage insured, by which the risk is altered, though the original terminus *ad quem* of the voyage insured is still kept in view.[1]

If ports of call are named in a successive order, the ship must take them in the same succession in which they are named.

If they are not named in any order, they must be taken in the order in which they occur in the usual and most convenient and practicable course of the voyage, not according to the shortest geogra-

[1] Arnould on M. I., vol. I., p. 394; 3 Kent's Com. p. 424.

phical distances. Any departure from the above would be considered a deviation.[1]

Thus, a ship was insured at and from Fisherrow to Gothenburgh and back to Leith and Cockenzie. It appeared in evidence that Leith was a very safe and commodious harbour, and Cockenzie a very small and insecure one, especially in the winter season. That the two places are about ten miles apart from each other; but Cockenzie lies nearer to Gothenburgh than Leith, and it is about a mile and a half out of the way to put into Cockenzie in going from Gothenburgh to Leith. There was no settled course of trade to regulate the voyage in this respect. The ship first put into Cockenzie, and in coming out was stranded and was lost. It was held, that the putting into Cockenzie first was a deviation by which the underwriters were discharged.[2]

But where the intentions of the contracting parties are clear, a departure from the usual course would not be a deviation. As where the policy was for a voyage "at and from Martinique, and all and every West India islands, to London," and the vessel, after leaving Martinique, sailed to St. Domingo, which was much out of her course from Martinique to London, and took in her cargo there, and was captured on the voyage to London. Lord Mansfield held that the clause in the policy

[1] Gairdner *v.* Senhouse, 3 Taunt. 16; Marsden *v.* Reid, 3 East. Rep. 577.

[2] Beatson *v.* Haworth, 6 T. R. 531.

warranted a course from Martinique to islands not in the homeward voyage.[1]

A policy of insurance was effected on a vessel "at and from Liverpool to ports and places in China and Manilla, all or any, during the ship's stay there for any purposes, and from thence to her port or ports of calling and discharge in the United Kingdom, with liberty to call and stay at all or any ports or places on either side of, and at the Cape of Good Hope." The vessel sailed direct from Liverpool to a port in China, having on board a cargo for that port, and also for Manilla. She afterwards discharged the remainder of her outward cargo. At Manilla the captain took on board on freight 230 chests of opium for Tongkoo and sailed from Manilla (the vessel not being a tenth part laden), intending to seek there a freight back to England, and whilst he was sailing towards Tongkoo the vessel was by the perils of the sea totally lost. Tongkoo is altogether out of the regular course of a voyage from Manilla to England. It was held, that the sailing from Manilla to Tongkoo was not a deviation, the words in the policy meaning not "from Manilla" only, but "from ports or places in China and Manilla, all or any."[2]

If a ship is bound on a voyage "to ports of discharge" which are not specifically named in the contract, the rule is, that the ship must visit such

[1] Bragg *v.* Anderson, 4 Taunt. 229.

[2] Ashley *v.* Pratt, 17 L. J. Ex. 135.

ports in the geographical order of their distance from the port of departure.

Thus, where a ship was bound "from London to her ports of discharge within the Straits of Gibraltar as high as Messina," and sailed with a freight for Marseilles, but with instructions to go also to Genoa, Leghorn, and Naples; on arriving off Marseilles, her first port of discharge in geographical order, as she was prevented by contrary winds from putting in there, she proceeded first to Genoa and then to Leghorn, from which latter place she was making her way back to Marseilles, when she was captured; this sailing back to Marseilles was held to be a deviation.[1]

If several successive ports of discharge are specifically named, it is not necessary that the ship should sail to all of them; she may omit any, or sail only to one, the sole limitation being, that if she visits more than one, she must take them in the order in which their names occur.[2]

Thus, on a voyage to Palermo, Messina, and Naples, it was held that a voyage to the three places named meant a voyage to either of them, or any of them in their order, and that any of the places might be dropped; but if the ship went to more than one, she must take them in the order named.[3]

The ship, in touching at any place for orders before

[1] Clason v. Simmonds, 6 T. R. 533.
[2] Arnould on M. I., vol. 1, p. 413.
[3] Marsden v. Reid, 3 East. Rep. 577.

she has selected her port of discharge, is not confined to take the ports in the successive order in which they lie in the course of the voyage, but may return to a port she has quitted for orders as to her port of discharge; but after selecting her port of discharge she must touch at ports only in their successive order.[1]

But insurance generally "to a market," or for the purpose of obtaining or loading a cargo, or trading in a certain mentioned region, authorizes passages backwards and forwards for the purposes of the voyage, regard being had to the prevailing winds and currents as to the order of touching at ports, and such a policy covers the risk to the same port more than once.[2]

The extent of the license, by which liberty is given to the ship "to call," or "to touch," or "to touch and stay," or "to touch, stay, and trade," either "at certain specified ports," or "at all ports whatsoever for all purposes whatsoever," &c. &c., depends upon the nature and extent of the risk contemplated and undertaken by the parties to the policy, and are to be collected from the contents of the policy itself.

The construction of these clauses must be governed by the character of the voyage described, and by the fair and reasonable construction of the provisions

[1] Andrews v. Mellish, 5 Taunt. 496; Hunter v. Leathley, 10 B. & C. 858.

[2] Warre v. Miller, 4 B. & C. 538; Forbes v. Aspinall, 13 East. Rep. 323; Forbes v. Cowie, 1 Camp. 520.

of the policy; and if the purpose is expressed, the construction is to be liberal in reference to such purpose. Thus, where a ship was insured at and from Pernambuco to London, liberty was given to proceed and sail to, and touch and stay at any ports or places whatsoever, and to call, take in, deliver, or exchange goods at any place; and the vessel, after touching at Pernambuco and finding no cargo there, sought it at St. Salvador, another port in the Brazils, and the same distance as Pernambuco out of the direct course to London; it was held to be no deviation.[1]

But it may be taken as a general rule that a liberty to touch and stay, though couched in very extensive terms, can only confer a power of visiting such ports as lie in the usual and direct course between the termini of the voyage insured.[2]

However extensive the language of these clauses may be, they can never confer a power of visiting ports out of what, upon a fair construction of the whole policy, appears to have been the course of the voyage contemplated and insured by the parties; nor will they justify the ship in visiting any port, even though within the local limits of the voyage insured, for any purpose which is not connected with the main object of the adventure.[3] Thus, where the

[1] Lambert *v.* Liddard, 5 Taunt. 480; Harrower *v.* Hutchinson, Law R. 4 Q. B. 523; s. c. Law R. 5 Q. B. 584.

[2] Arnould on M. I., vol. 1, p. 419.

[3] Langhorn *v.* Allnutt, 4 Taunt. 510; Rucker *v.* Allnutt, 15 East. Rep. 278; Solly *v.* Whitmore, 5 B. & Ald. 45.

insurance was from Para to New York, "with leave to call at any of the windward and leeward islands on the passage, and to discharge, exchange, and take on board the whole or any part of any cargo, at any ports or places, particularly at all or any of the windward and leeward islands, without being deemed any deviation," the ship having proceeded to two of the leeward islands for a purpose wholly unconnected with the voyage, it was held a deviation.[1]

So, in another case a ship was insured "at and from London to New South Wales, and at and from thence to all ports and places in the East Indies or South America," with liberty "to proceed and sail to, touch and stay at any ports or places whatsoever, particularly to trade and sail backwards and forwards, and forwards and backwards." Under this policy, the ship sailed from London with convicts for New South Wales. From thence she sailed to New Zealand and back to New South Wales. On her way back from New South Wales she was lost. It was held, that notwithstanding the extensive terms of the policy, the sailing to New Zealand was a deviation, as New Zealand lay entirely out of the course of the voyage from New South Wales, either to the East Indies or to South America, and not connected with either of the voyages contemplated by the parties.[2]

[1] Hammond *v.* Reid, 4 B. & Ald. 72; Ranken *v.* Reeve, 2 Park's M. I. 627.

[2] Bottomley *v.* Bovill, 5 B. & C. 210.

If the ship is in a port which she was justified in visiting, it is not a change of the risk, and it does not discharge the insurers for her to trade, or land, or take on board goods in such port, even although such acts were foreign to the main purpose of the adventure, if no delay or enhancement or variation of the risk is occasioned thereby.[1]

An act of trading not contemplated by the parties to the policy, and unconnected with the main object of the adventure, is justifiable only on condition that it be completed during the period of the ship's lawful stay at an allowed port for a justifiable purpose; and any delay caused by it beyond the time *bonâ fide* necessary for accomplishing the legitimate purpose for which the ship visited the port, is a deviation.[2]

"To sail with or without pilot."

Wherever usage requires that a pilot should be engaged, or it is compulsory by the law of the country in which the vessel is, that a pilot should be employed by any vessel entering or leaving the port, it is obligatory on the master to secure the services of a duly qualified pilot, where practicable. It is a duty which he owes to his owners, to the shippers, and also to the insurers. And if the law and usage, or the nature of the navigation requires the employment of a pilot, the master must take one, and as it is a part of the implied warranty of seaworthiness

[1] Raine *v.* Bell, 9 East. 195; Delaney *v.* Stoddart, 1 T. R. 22; Cormack *v.* Gladstone, 11 East. Rep. 347; Laroche *v.* Oswin, 12 East. Rep. 131.

[2] Warre *v.* Miller, 4 B. & C. 538; Williams *v.* Shee, 3 Camp. 469; Inglis *v.* Vaux, 3 Camp. 437.

that the master should engage a pilot, the insured will be deprived of any recourse against the insurers, whether the loss can be traced to such breach of the warranty or not.[1]

Thus, where a homeward bound ship received on board at Orfordness a pilot under the 5 Geo. 2, c. 20, who quitted her at Halfway Reach before she had arrived at her moorings, after which, before she was safely moored, an accident happened and the vessel was sunk. The underwriter on the ship and cargo was held discharged from his liability on account of there being no pilot on board at the time, though it did not appear that the loss was directly imputable to want of skill in those who navigated the vessel.[2]

The true position seems to be that, except where required by the positive regulations of an Act of Parliament, which have, as laid down by Patteson, J., the effect of creating an intermediate voyage, on which the ship is not seaworthy without a pilot, the negligence of a master in not taking a pilot on board, in entering a port at any intermediate stage of the voyage, where usage requires him to do so, will not discharge the underwriters from liability.[3] For if on arrival off a port, the master uses due diligence to obtain a pilot, but is unable to secure one, and then does what a prudent master ought to do under

[1] Dixon *v.* Sadler, 5 M. & W. 414; 9 L. J. Ex. 48.

[2] Law *v.* Hollingsworth, 7 T. R. 160.

[3] Hollingworth *v.* Brodrick, 7 Ad. & E. 44; Dixon *v.* Sadler, 8 M. & W. 900.

the circumstances, the insurers would not be discharged if the ship were lost by any of the perils insured against.

Thus, where a ship arrived at 3 P.M. off Sierra Leone, where there was a regular establishment of pilots, and being unable to procure a pilot in answer to his signals, the master attempted to enter the river without one, and in so doing the ship took the ground and was lost. The jury were of opinion that under the circumstances the master had acted as a prudent man, and held the underwriters liable.[1]

The introduction into the bill of lading of the words "to sail with or without pilots," will not have the effect of releasing the shipowner from any responsibility which would otherwise attach to him. If his vessel is prohibited by any statutory law from entering or leaving a port without a pilot being on board, he cannot rid himself of his responsibility to the shippers of goods on his vessel, for loss or damage which the cargo may have sustained by the non-employment of a pilot. A contract of this nature, being an agreement to do an act in violation of statutory law, would to that extent be void, its character is such that if permitted it would defeat the provisions of the various statutes and enactments relating to compulsory pilotage, and in India would be void under the Indian Contract Act.[2]

In the United Kingdom the effect of these words

[1] Phillips v. Headlam, 2 B. & Ad. 380.

[2] Act IX. of 1872, sec. 23.

would be construed and governed by the principles touching the validity of contracts,[1] and being contrary to public policy and in contravention of the statute law, would be equally void there.

In places where pilotage is not compulsory by law, but where its perilous navigation has made the employment of pilots usual and customary, it might be a question for the jury, notwithstanding the words in the bill of lading, to consider whether the master, as a common carrier of the goods, had, under the particular circumstances of the case, acted negligently or imprudently, and whether this clause in the bill of lading absolved him from liability.

"And to tow and assist vessels in all situations of distress."

It is an undecided and very doubtful proposition of English law whether a deviation for the purpose of rendering salvage service to property would, upon general principles, avoid a policy of insurance, and Sir R. Phillimore, in the case of the "Thetis,"[2] refused to give his assent to this proposition.

Dr. Lushington, in giving judgment in Papayanni *v.* Hocquard,[3] which came before the Privy Council in 1866, said: "It never has been directly decided by any Court in this country what is the effect of a deviation, where the object of that deviation has been the performance of salvage service with reference either to life or to property."

The American Courts appear to have made a

[1] Macgregor *v.* Dover & Deal Ry. Co., 18 Q. B. 618.
[2] Law R. 2 Adm. 368; 38 L. J. Adm. 42.
[3] The True Blue, Law R. 1 P. C. 250.

distinction between a deviation for the purpose of saving life, and for that of saving property; and it is still a matter of uncertainty whether such a distinction has been finally established.[1]

However, the rendering of salvage services is an obligation required by the dictates of humanity, by the principles of public policy, and by the general interests of society, and has been recognized as such by the practice and jurisprudence of every civilised State. "It is the duty," Lord Stowell says in the case of the "Waterloo,"[2] "of all ships to give succour to others in distress: none but a freebooter would withhold it."

Where the bill of lading contains a provision that the vessel may "assist and tow vessels in all situations," it is not competent to the owner to deny that the attempt to salve a vessel in distress was within the scope of the authority, and in the course of the employment of the master.

Thus, where the steamer "Thetis," while on a voyage from Marseilles to London, fell in with the steamer "Sardis," which had been disabled by an accident to her machinery; the master of the "Thetis" agreed to tow the "Sardis" to port, for a sum agreed on. In endeavouring to do so, the "Thetis" negligently came into collision with the "Sardis" and

[1] 3 Kent's Com., pp. 425-426 and note; 2 Parsons Mar. Law Bk. 2, c. 8, p. 298.

[2] 2 Dods. Adm. Rep., p. 437; Lawrence v. Sydebotham, 6 East. Rep. 53.

sunk her. The policy of insurance upon the "Thetis" and her bills of lading provided that she might assist and tow vessels in all situations. Held, that the master of the "Thetis" was acting within the scope of his general authority as master in endeavouring to tow the "Sardis" to port, and that the owners of the "Thetis" were consequently liable for the damage caused by his negligence in so doing. Also, that even if there had been no clause in the policy of insurance or bills of lading as to salvage services, the master would nevertheless have been acting within his general authority as master, in rendering salvage services to the "Sardis."[1]

"Being marked and numbered as per margin."

Bills of lading are evidence against the master, or the owner of the ship, not only as to the reception of the merchandise, but as to any material fact stated in them respecting the quantity, or quality, or any other element in the description of the goods. It is therefore usual to describe them only as so many boxes, or bales, or parcels, "numbered and marked as per margin"; sometimes the words "contents unknown," or, "said to contain," &c., are added; and if the words "containing," &c., are added, which is also not unusual, the master and ship are held bound only to deliver the boxes as they were received by them.[2]

When the cargo has been delivered and taken on board by weight, number, or measure, the master

[1] Law R. 2 Adm. 368; 38 L. J. Adm. 42.
[2] Parsons on Sh., vol. i., p. 197.

ought to be very careful that the weight, number, or measure expressed in the bills of lading, corresponds precisely with the weight, number, or measure as had been noted in the log-slate, cargo-book, or log-book. Though the statement in the bill of lading is, as between the shipper and shipowner, not decisive proof of the real quantity actually shipped, and is held to operate merely as a receipt liable to be corrected by evidence; yet, even in this instance, the mere circumstance of a bill of lading being challenged as untruthful, tells very strongly against the veracity and correctness of the subscribing master, and the result may be much more serious if such a bill of lading be in the hands of an onerous indorsee.

Where the master had been induced by the fraud (as alleged) of the shipper's agent at Singapore, to sign a bill of lading for 890 bags of pepper, while only 790 had, in fact, been shipped, it was held, that as between the original parties the bill of lading was merely a receipt liable to be opened up by evidence of the real fact, to be ascertained by a jury, whether, in fact, 890 bags, or only 790, were shipped.[1]

Where 1,676 bags of rye meal, or bran, all being marked alike "S. S. C. M.," some weighing twelve stone and some eight stone, were shipped on board a general ship and stowed without distinction, and the master signed two bills of lading, one for

[1] Bates *v.* Todd, 1 M. & Rob. 106; see also Berkley *v.* Watling, 7 Ad. & E. 29; Hubbersty *v.* Ward, 8 Ex. 330; Campion *v.* Colvin, 3 Bing. N. C. 17; McLean *v.* Fleming, Law R. 2 H. L. 128; Meyer *v.* Dresser, 33 L. J. C. P. 289.

1,209 bags and another for 467 bags, the latter stating it to be "rye, feeding meal, or bran, gross 35 tons 9 cwt. English weight," and added at the foot "contents unknown and not responsible for weight"; it was held, that under this latter bill of lading the master was bound to deliver 467 of the twelve stone bags, as the gross weight in the bill of lading could only be satisfied by all the bags delivered being of the larger size.[1]

The shipowner is estopped from alleging, in an action brought against him by an indorsee, or assignee for value, for non-delivery of the cargo, that the goods at the time of shipment were not marked in the manner described in the bill of lading. Thus, where four casks of wire were shipped in London for Calcutta, and were described in the bill of lading as bearing a certain mark, beneath which was the word "Calcutta," as being the port of destination, and contained express exemptions for loss arising from obliterations or illegible marks. The indorsee of the bill of lading, upon demanding delivery of the four casks on the arrival of the vessel at Calcutta, found that they had been landed at Colombo, from whence they were subsequently forwarded. In an action for the value of the goods, it was held, that the defendant was estopped from alleging that the casks were not marked as stated in the bill of lading.[2]

Likewise a statement in the margin of the bill of

[1] Bradley *v.* Dunipace, 31 L. J. Ex. 210.

[2] Madhub Chunder Dey *v.* Law, 13 Ben. L. R. 394.

lading that freight has been paid, is conclusive against the shipowner in an action by the assignee of the bill of lading to recover the goods.[1]

"And to be delivered, subject to the exceptions and conditions hereinafter contained."

The master and shipowners of a general ship being *primâ facie* common carriers of goods for hire, are at common law, and irrespective of the bill of lading, regarded as insurers against all loss or injury occasioned to the goods delivered to them on freight by fire, or robbery, or any other cause, excepting "the act of God and the king's enemies."[2]

This liability on their part is usually limited in the bill of lading contracting for the safe carriage and delivery of the cargo, by some express clause exempting them from certain specified perils.

There is no foundation for the doctrine that all owners of ships carrying goods for hire, whether they be common carriers or not, are subject to the same liability as that which attaches to the common carrier.

This question was judicially determined for the first time in 1876, in the case of Nugent *v.* Smith,[3] the authorities from the earliest period downwards being carefully reviewed by Cockburn, C. J., who cited with approbation the following definition of a common carrier as laid down in Parsons on Shipping[4]:

[1] Howard *v.* Tucker, 1 B. & Ad. 713.

[2] Macklin *v.* Waterhouse, 5 Bing. 217; Forward *v.* Pittard, 1 T. R. 27; Hyde *v.* Trent Nav. Co., 5 T. R. 389; Liver Alkali Co. *v.* Johnson, 43 L. J. Ex. 217; Nugent *v.* Smith, 45 L. J. C. P. 697.

[3] 45 L. J. Q. B. 697.

[4] Vol. I., p. 245.

"A common carrier is one who offers to carry goods for any person between certain termini and on a certain route. He is bound to carry for all who tender to him goods and the price of carriage, and insures these goods against all loss but that arising from 'the act of God' or the public enemy, and has a lien on the goods for the price of the carriage. If either of these elements is wanting, we say the carrier is not a common carrier either by land or by water. If we are right in this, no vessel will be a common carrier that does not ply regularly, alone, or in connection with others on some definite route, or between two certain termini."

But, notwithstanding the exception which is usually inserted as "the act of God, the king's enemies, fire, and all and every other dangers and accidents of the seas, rivers, and navigation, of whatever nature and kind soever, during the said voyage," the master and shipowners are held responsible for every injury caused by the said risks, which might have been prevented by human foresight or care.

The exceptions in the bill of lading do not exempt the shipowners, or the master, from the consequences of the want of reasonable skill, diligence, and care; but only from the absolute liability of a common carrier, so far as the excepted causes are concerned, that is, the exceptions only exempt them from liability for loss which has been caused by some of the excepted causes, and which could not

have been avoided by reasonable care, skill, and diligence.[1]

Notwithstanding the exceptions in the bill of lading, if it is proved that the injury was caused by the negligence of the shipowners or master, they are liable even when the exceptions cover the cause of injury.[2]

Although the rule is thus laid down in general terms at common law, that the carrier is responsible for all losses not occasioned by the act of God, or of the king's enemies, it is to be understood in all cases that the rule does not cover any losses not within the exceptions, which arise from the ordinary wear and tear,[3] and chafing of the goods in the course of their transportation; or from their ordinary loss, deterioration in quantity or quality, in the course of the voyage, or from their inherent natural infirmity and tendency to damage or wrong, or by the misconduct of the owner or shipper thereof.[4]

"In the like good order and condition"

By the bill of lading, the master undertakes to deliver the goods or cargo "in the like good order and condition" as they had been shipped on board, *i.e.*,

[1] Laurie *v.* Douglas, 15 M. & W. 746; Grill *v.* General Iron S. Collier Co., Law R. 1 C. P. 600; Law R. 3 C. P. 476; Czech *v.* G. S. N. Co., Law R. 3 C. P. 17; Ohrloff *v.* Briscall, Law R. 1 P. C. 231; Leuw *v.* Dudgeon, Law R. 3 C. P. 17n; Lloyd *v.* General Iron S. Collier Co., 33 L. J. Ex. 269.

[2] Notara *v.* Henderson, Law R. 7 Q. B. 235; Laveroni *v.* Drury, 8 Ex. 166.

[3] Graham *v.* Hille, 10 Bom. H. C. Rep. 60; The Nepoter, Law R. 2 Adm. 375.

[4] 3 Kent's Com., p. 406 et seq.; Story on Bail, s. 492*a*.

not that the captain is to preserve and deliver them in the identical good order as when shipped, but that he is to take all possible care of them during the voyage. A literal and precise application of the provisions of the bill of lading would deprive the shipowner of all freight, if the goods were not delivered in as good condition as received.[1]

If the goods are delivered, but are damaged by causes for which the shipowner is responsible, the freight is payable, but the shipper may claim compensation for the damage, whether it be greater or less in amount than the freight. And it is well settled in England, that the shipper cannot, in an action brought against him for freight, set up, in defence, that the goods were damaged by the negligence of the carriers, but must resort to a cross-action.[2]

The master is primarily and generally the agent of the shipowner, to convey the cargo safely to its destination, in order to earn freight.[3] Under ordinary circumstances, beyond carrying the cargo safely, the master has nothing to do with it, but events may happen during the voyage which render it expedient and necessary that he should act for the owner of the cargo, and on such occasions he is by law invested with an implied authority to do so.[4]

[1] Parsons on Sh., vol. 1, p. 206.

[2] Bornmann *v.* Tooke, 1 Camp. 377 ; Shields *v.* Davis, 6 Taunt. 65, 4 Camp. 119.

[3] Dakin *v.* Oxley, 33 L. J. C. P. 115.

[4] Notara *v.* Henderson, Law R. 7 Q. B. 230.

As agent for the shipowner he is bound to receive the cargo, to stow it properly, to ventilate it when necessary,[1] to take all possible care of it during the voyage,[2] to use reasonable exertion to preserve it, to carry it directly and to deliver it safely, being liable for any damage or injury which the goods may have sustained by reason of bad or defective stowage,[3] or from the improper collocation of the cargo.[4] The owner is also liable for loss or injury to the goods, arising from the careless or negligent conduct of the master and crew in the course of the voyage, unless the liability of the shipowner for such negligence or misfeasance has been limited by the conditions of the bill of lading.[5]

But the shipowner is only liable for the value of the goods lost or damaged, and not for the costs incurred by the master in defending a suit, where in so doing he does not act as a reasonable and prudent man would have done, as where he refuses to recognize a legal claim in respect of which it is clear he has no defence.[6]

Lord Chancellor Cairns, in considering the effect of the words "to be delivered from the ship's deck, where the ship's responsibility shall cease, in the like

[1] Davidson *v.* Gwynne, 12 East Rep. 381.

[2] Abbott on Sh., 278; Notara *v.* Henderson, Law R. 7 Q. B. 230; Story on Agency, p. 140.

[3] The Nepoter, Law R. 2 Adm. 375.

[4] The Freedom, Law R. 3 P. C. 595.

[5] Steel *v.* State Line Steamship Co., 4 S. C., 657; 3 Asp. Mar. Law Ca. N. S. 516; 36 L. T. N. S. 333.

[6] Ronneberg *v.* Falkland Islands Co., 2 Asp. Mar. Law Ca. 30.

good order and condition," said, "I think there cannot be any reasonable doubt entertained that this is a contract which not merely engages the shipowner to deliver the goods in the condition mentioned, but that it also contains in it a representation and an engagement; a contract by the shipowner that the ship in which the goods are placed is, at the time of its departure, reasonably fit for accomplishing the service which he engages to undertake and perform. Reasonably fit to accomplish that service the ship cannot be unless it is seaworthy. By 'seaworthy' I do not desire to point to any technical meaning of the term, but to express that the ship should be in a condition to encounter whatever perils of the sea a ship of that kind, and loaded in that way, may be fairly expected to encounter on the voyage."[1]

"From the ship's deck, when the ship's responsibility shall cease."

Speaking of a delivery that would satisfy and exhaust the bill of lading, Willes, J., says: "There can be no complete delivery of goods until they are placed under the dominion and control of the person who is to receive them."[2]

The manner of delivering the goods, and consequently the period at which the responsibility of the master and owners will cease, depends upon the custom of particular places and the usage of particular trades, and must be made in accordance with the

[1] Steel v. The State Line Steamship Co., 3 Asp. Mar. Law Ca. N. S. 516.

[2] Meyerstein v. Barber, Law R. 2 C. P. 50.

same, unless there be something expressly in the bill of lading to control this.[1]

Thus, where 69 bales of hides were shipped from Calcutta to London, the bill of lading provided that they were "to be delivered from the ship's deck, where the ship's responsibility shall cease," and according to the finding of the jury, the bales were unloaded from the defendant's steamer and placed upon a quay in the Victoria Docks, by the Dock Company, in the absence of the consignees. Sixty-eight of the bales only were put on board the barges sent by the plaintiff's agent to receive them, and thus one of the bales was never delivered by the Dock Company, and was lost. In an action for the value of the same, it was held "that by the terms of the bill of lading the defendant's liability ceased when the goods left the ship's deck, and that he was therefore not liable for the non-delivery of the missing bale to the plaintiffs."[2]

So, where machinery was landed at Bombay under a bill of lading expressed as above, and a bedplate was safely lowered into a boat alongside, but instead of being placed flat at the bottom of the barge, it rested at an angle against the side of the barge, so that the under surface of the plate was unsupported. Two cases had been lowered alongside of it, and whilst a third was descending, it slipped out of the tackle, and fell on to them, breaking the bedplate

[1] Gatliffe v. Bourne, 4 Bing. N. C. 314; s. c. 7 L. J. C. P. 172; Hyde v. The Trent and Mersey Navigation Co., 5 T. R. 389.

[2] Petrocochino v. Bott, 43 L. J. C. P. 217.

though not injuring the other cases. The bedplate having been delivered in good order into the barge, the master was absolved from liability for its breakage by the clause in the bill of lading, there being no evidence of culpable negligence on his part.[1]

"From the ship's tackle."

The law annexes as a condition to the earning of freight that the goods should "be delivered safe, clear of the ship's tackle." The reasonable acceptation of the term is delivery at such a time and place and in such a mode, as is consistent with the power of the intended recipient to receive, have and retain it in his possession, and constitute a delivery within the intention of the deliverer at the time. Therefore it will be no delivery if the article, whilst being lowered over the ship's side, slips out of the ship's tackles, or the ship's slings, forming part of the tackles, and falls into the boat or barge in such a manner as to roll or slip into the water, and be lost before the lighterman could secure it. But the conditions in the bill of lading that the goods are "to be taken from the ship's tackles," will be fulfilled, if the master places the cargo safely over the ship's side in such a position that the consignee can, if he desire, safely take delivery of it from the tackles. Thus, in the case of the "Cosmopolite," the bill of lading contained the express words "to be taken from the ship's tackles," and on arrival at St. Thomas with a boiler weighing 35 tons, sheers were erected on the

[1] The Sassoon Press Co. *v.* Brown, Master of the S. S. "Ariel," Bombay, 5th November 1874.

wharf, the boiler was hoisted, and the vessel hauled out to her anchorage; but the consignee declined, on various grounds, to take the boiler from the ship's tackles and sheers, demanding that it should be lowered into the steamer for which it was destined. This was refused, and the consignee, after abandoning an action which had been commenced, hired the ship's tackles and accepted the boiler as tendered, the conditions in the bill of lading having been fulfilled by the master.[1]

"At L."

In England, when goods are brought by ships from foreign countries, the bill of lading is merely a special undertaking to carry from port to port, and in such case it has been considered that according to the established course of trade, a delivery on the usual wharf is such a delivery as will discharge the shipowner. Buller, J., in Hyde *v.* The Trent and Mersey Navigation Co.,[2] says, "When goods are brought here from foreign countries, they are brought under a bill of lading which is merely an undertaking to carry from port to port." Ashurt, J., in the same case, says: "The case of foreign goods brought to this country depends on the custom of the trade, of which the persons engaged in it are supposed to be cognizant; by the general custom, the liability of ship carriers is at an end when the goods are landed at the usual wharf."[3]

Where the freighter upon the arrival of his ship in

[1] 2 Mit. Mar. N. 86.
[2] 5 T. R. 389.
[3] Ang. on Car., s. 309.

the Thames, refused to name a wharf at which the cargo could be discharged and delivery made, it was considered that he was not ready and willing to accept the cargo, and was liable in damages to the ship-owner for the amount he would have received as freight, if the cargo had been duly delivered.[1] And where, to an action for not delivering goods shipped on board a steam packet at Dublin to the plaintiff or his assigns at the port of London pursuant to the bill of lading, the plea was that the goods were safely landed and deposited on a certain wharf, called Fenning's Wharf, at London, to remain there until they could be safely delivered to the plaintiff or his assigns, it being usual and customary for steamers from Dublin to land and deposit goods at the said wharf for the use of the consignees; and that whilst there the goods had been destroyed by an accidental fire. The plea was held bad, it not being alleged that the delivery had been made according to the custom and practice of the port of London, or that a reasonable time had been allowed to elapse after the ship's arrival, in order to give time to the consignee to claim and receive his goods alongside the vessel. "The defendants," said Chief Justice Tindal, "profess in their plea to substitute a delivery at Fenning's Wharf, in the port of London, for and in the place of a delivery 'at the port of London to the plaintiff or his assigns,' as required by the terms of the bill of lading. But we know of no general rule of law which

[1] Stewart *v.* Rogerson, Law R. 6.C. P. 424.

governs the delivery of goods under a bill of lading, where such delivery is not expressly in accordance with the terms of the bill of lading, except that it must be a delivery according to the practice and custom usually observed in the port or place of delivery."[1]

"To A. B. or order or assigns."

In the bill of lading the name of a consignee is mentioned, but it sometimes happens that the shipper or consignor is himself named as a consignee, and the engagement is expressly to deliver to him or his assigns; sometimes no person is named as consignee, but the terms of the instrument are "To be delivered, &c. unto A. B., order, or assigns," which words are generally understood to import an engagement on the part of the master to deliver the goods to the person to whom the shipper or consignor shall order the delivery, or to the assignee of such person.

The person entitled to receive the cargo is the lawful holder of the bill of lading, being the consignee named therein, or his assignee under a proper indorsement of the bill of lading.[2]

But the master cannot be expected to determine such a difficult question as the legal title to a bill of lading as the representative symbol of the cargo. If a bill of lading in proper form is presented to him at the port of discharge, he is justified in giving up

[1] Gatliffe *v.* Bourne, 4 Bing. N. C. 314.

[2] Meyerstein *v.* Barber, Law R. 2 C. P. 38; Ibid. 661; Sheridan *v.* New Quay Co., 28 L. J. C. P. 58; Fearon *v.* Bowers, 1 H. Blkst. 364 n.

the cargo to the holder; and if there be more than one such, the master having no reason to determine him against any one of them, yet delivers to one, he is not therefore liable to an action by any of the other holders. But if he is in doubt what course to take, especially when there appear to be conflicting interests, he ought to take an indemnity from the holder to whom he means to deliver the cargo.[1]

In considering to whom he will be safe in making and in refusing delivery, it may be useful to remind the master that he can rarely incur any responsibility by adhering strictly to his engagement with the shipper. In the cases of Brandt *v.* Bowlby[2] and Coxe *v.* Harden,[3] whatever might have been the rights of the consignees, the master and his owners would have been safe, had he not departed from his contract in the bill of lading to deliver only to the order of the shipper.

The master should remember that the cases in which the consignor is entitled to alter the destination of a consignment are not of frequent occurrence.

"He or they paying freight for the same."

Payment of freight is always provided for by the insertion of stipulations in the bill of lading, the terms of which vary more or less in accordance with the nature of the voyage and the description of cargo to be conveyed. As the usual bill of lading expresses that the goods are to be delivered to A. B.,

[1] The Tigress, 32 L. J. Adm. 97; Caldwell *v.* Ball, 1 T. R. 205.
[2] 2 B. & Ad. 932.
[3] 4 East Rep. 211.

"he paying freight thereon," the receiving of the goods under that bill, whether by the original consignee, or any assignee or indorsee of the bill, is evidence of an obligation to pay the freight.[1]

In Merian *v.* Funck,[2] the Court said: "It is well settled that when the goods, by the terms of the bill of lading, are to be delivered to the consignee, or to his order, on payment of freight, the party receiving them, whether a consignee or an indorsee, to whom the bill of lading is transferred by the consignee, makes himself responsible for the payment of freight."

The usual clause engaging the master of the ship to deliver the goods to the consignee or his assigns, he or they paying freight for the said goods, is introduced for the benefit of the master only, and not for the benefit of the consignor, and therefore the master is not bound to the consignor to withhold the delivery of the goods unless the consignee or his assigns pay the freight.

Nor does it vary the case that the consignor is also the charterer of the ship.[3]

The words "paying freight as per charter-party," refer to the charter-party merely for the purpose of ascertaining the rate of the freight,[4] and do not apply to any other conditions of the charter-party.[5] Where

[1] Parsons on Sh., vol. 1, p. 207.

[2] 4 Denio 110.

[3] Shepard *v.* De Bernales, 13 East 565; Domett *v.* Beckford, 5 B. & Ad. 521.

[4] The Norway, B. & L. 226; s. c. 12 L. T. N. S. 57.

[5] Chappel *v.* Comfort, 31 L. J. C. P. 58.

the charter-party made the cargo deliverable on being paid freight, as follows, "the ship to have a lien on cargo for freight; £3 10*s*. per ton of 50 cubic feet to be paid to captain or his agents on right and true delivery at port of discharge," it was held, that the shipowner had no lien against the indorsee of a bill of lading for the whole chartered freight, but only for the freight due on the goods mentioned in the bill of lading[1]; and the holder of the bill of lading, subject to the conditions of a charter-party, will be liable for dead freight where such is payable under the charter-party.[2]

Where freight was to be paid by the shipper one month after sailing, "ship lost or not lost," and the bill of lading was handed for value to G. and Co., it was held, that the shipowner had a lien as against the defendants for the bill of lading freight, the assignee having taken the bill of lading with the risk attached to it, and therefore subject to the lien.[3]

Where a charter-party authorized the master to sign bills of lading at such freights as might be required by the charterer's agents, without prejudice to the charter, which gave an absolute lien on the cargo for freight, it was held that the owner's lien only extended to the sums mentioned in the bill of lading which he had authorized the master to sign, and that he had no lien on the cargo for the chartered amount,

[1] Fry *v.* The Chartered Mercantile Bank of India, London and China, 35 L. J. C. P. 306.

[2] Gray *v.* Carr, 40 L. J. Q. B. 257; s. c. Law R. 6 Q. B. 522.

[3] Neish *v.* Graham, 27 L. J. Q. B. 15.

which was much larger than the sums named in the bill of lading.[1]

Freight is the reward payable to the shipowner or master for the safe carriage and arrival of goods ready to be delivered.[2] Freight.

The title thereto is conditional on performance, and payment thereof is secured by a lien at common law on the goods carried. Sums payable in advance, as where the ship was to receive 42 casks of wine to be carried from London to the Cape, the shippers undertaking to pay charterer £5 per ton for the casks, on delivery to the shipper of the proper bill of lading of the casks on board the ship, not being dependent on performance of the carrier's contract, are not of the nature of freight though often called by that name, and the incidents of freight do not attach thereto.[3]

The word "freight" in insurance law, and as employed in policies, has a more extensive signification than in the general law of shipping, and is used comprehensively to denote the benefit derived by the shipowner from the employment of his ship; so in policies of insurance freight denotes the price agreed to be paid by the charterer to the shipowner for the hire of his ship under a charter-party, or contract of affreightment. Hence the definition of freight, as a

[1] Gilkison *v.* Middleton, 26 L. J. C. P. 209. But see Kirchner *v.* Venus, 7 W. R. 455.

[2] Kirchner *v.* Venus, 12 Moore P. C. 361; 7 W. R. 455.

[3] Andrew *v.* Moorhouse, 5 Taunt. 435.

subject of marine insurance, that it is either the remuneration to be paid to the shipowner for the hire of his ship, under an express contract of affreightment for a certain voyage, or the price to be paid to him for the carriage of goods, irrespective of such contract. It may further be applied to denote the benefit which the shipowner expects to derive from the carriage of his own goods in his own ship, in the shape of their increased value to him at the port of delivery.[1]

Dead freight.

The term "dead freight" is an inaccurate expression of the thing signified by it. It is not freight, but an unliquidated compensation for the loss of freight, recoverable in the absence and place of freight. It is the only expression given for the claim which arises in consequence of the failure to furnish a full cargo. It is so described in the English authorities and also in the Scotch. Professor Bell so represents it in his "Commentaries" and also in his "Principles," and it is also so defined in the "Law Dictionary." It is a term which has obtained a place in our mercantile language as well as in our law authorities.

What is called "dead freight" is recoverable by the shipowner from the freighter for deficiency of cargo.[2]

Lump freight.

Knight-Bruce, L. J., delivering judgment in the Privy Council in the case of the "Norway," said :

[1] Arnould on M. I., vol. 1, p. 250 ; Allison v. The Bristol Mar. Ins. Co., 43 L. J. C. P. 311.

[2] McLean v. Fleming, Law R. 2 H. L. 128; Phillips v. Rodie, 15 East Rep. 554 ; Bell's Prin., Sec. 430.

"Although the lump sum is called 'freight' in the bills of lading and charter-party, yet we think it is not properly so called, but that it is more properly a sum in the nature of a rent to be paid for 'the use and hire of the ship' on the agreed voyage. The shipowner is entitled to be paid the lump freight without any deduction for a loss of part of the cargo occurring during the voyage without the negligence or fault of the shipowner." [1]

And where a ship was chartered for a lump sum, and she arrived at her destination with the whole of her cargo, with the exception of a deck load which had been lost during the voyage by one of the excepted perils, the shipowner was held entitled to the whole of the lump freight, without deducting the portion of freight payable in respect of the deck freight which had been lost.[2]

So, where the charter-party provided a "lump sum freight of £5,000 to be paid, after entire discharge and right delivery of the cargo, in cash two months after the date of the ship's report inwards at the custom house," and a portion of the cargo was destroyed by fire on the voyage. It was held, that the loss having arisen from one of the excepted perils, the plaintiff was entitled to recover the lump sum agreed upon.[3]

[1] The Norway, 3 Moore P. C. (N. S.) 245; 13 W. R. 1086.

[2] Robinson *v.* Knights, 42 L. J. C. P. 213.

[3] The Merchant Shipping Co. *v.* Armitage, 43 L. J. Q. B. 25; Reynolds *v.* Jex, 13 W. R. 968.

When freight becomes payable.

According to the term of an ordinary charter-party or bill of lading, the whole voyage for which the freight is agreed to be paid, must be accomplished before any freight becomes payable. The master cannot, by wrongfully stopping short of the place of destination, compel the owner of the goods to take them and pay the freight, even for the part of the voyage performed, any more than the charterer or shipper, on the other hand, can insist on having the cargo delivered at an intermediate place, so as to deprive the shipowner of the opportunity of earning his full freight.[1] If he desires to have his goods short of their original destination, unless some arrangement is come to between them, he must satisfy the shipowner for the entire freight as fixed by the charter-party or bill of lading. But it is obvious that while such is the absolute right of each of the parties, this right may be varied or waived; and that while the shipowner may be willing to forego his right to earn the entire freight, on being paid a rateable part for so much of the voyage as has been performed, the owner of the goods, on the other hand, may be willing to take them at an intermediate place, and to waive the conveyance of the goods to their original destination, paying a proportionate part only of the freight, all claim to the residue being abandoned. Such an arrangement in substitution of the original contract, may not only be express, but may also be implied

[1] See Notara *v.* Henderson, Law R. 7 Q. B. 230.

from the circumstances and the conduct of the parties, and ought to be so implied where justice and equity require it.[1]

In the case of the "Teutonia,"[2] Sir R. Phillimore, in delivering judgment, said: "The general rule that freight is due only when the goods are delivered at the port of destination, is subject to exceptions or modifications, and these exceptions or modifications may arise out of the terms of an express contract, out of an implied contract, or out of the equity between the parties. The law of England, as administered in the Courts of Common law, requires the master to carry the goods to the place of destination, unless prevented by an unavoidable casualty; and requires the merchant, if the goods be so delivered, to pay the stipulated freight." Thus, where a ship was disabled at an intermediate port, and by the default of the owner of the cargo, the master was prevented forwarding the cargo to its destination, it was decided that the whole freight was payable.[3]

Some of the more ancient writers on maritime law, mention the case of goods put on board a ship without the knowledge or consent of the master or owners. It is evident that in such a case no contract for conveyance is made, but, nevertheless,

[1] Metcalfe *v.* The Britannia Iron Works Co., 45 L. J. Q. B. 837; s. c. 46 L. J. Q. B. 443.

[2] The Teutonia, 41 L. J. Adm. 12.

[3] The Soblomsten, 36 L. J. Adm. 5; Law R. 1 Adm. 293.

the master, upon delivery of them, will be entitled to the usual freight for the voyage.[1]

Freight may be earned before actual delivery of the goods, if they have been brought to the port of discharge ready to be delivered according to the bill of lading.[2]

According to the law of England, as a rule, freight is earned by the carriage and arrival of the goods ready to be delivered to the merchant.[3] Thus, in an action for freight by the shipowner, where, by the terms of the charter-party, two-thirds of the freight was payable on right delivery of the cargo, it was held that the payment of freight and delivery of the cargo must be simultaneous acts, and that if in point of fact they could not take place simultaneously, it must be shown that each party was ready and willing to perform his part of the contract.[4]

So, where the charter-party provided that freight should be paid at the rate therein specified, the cargo to be taken alongside and to be taken from the ship's tackle at the port of discharge free of risk and expense to the ship. The master required payment of the freight for the amount of the cargo delivered each day over the ship's side into the consignee's boats, and refused to deliver any more cargo, on the consignee's refusing to pay on delivery as required.

[1] McLach. on Sh., p. 370.

[2] Cargo ex Argos, 42 L. J. Adm. 49; Law R. 5 P. C. 159.

[3] Dakin *v.* Oxley, 33 L. J. C. P. 115; 12 W. R. 557.

[4] Paynter *v.* James, 15 L. T. 661; Law R. 2 C. P. 348.

It was held, that it was clear from the charter-party that the intention of the parties was that the master should, on the arrival of the ship at the port of destination, deliver, and that the consignees should receive, at the ship's side; and that as on such delivery and receipt the master ceased to be responsible, or to have any lien on the goods, he was justified in refusing to discharge the cargo without payment, at the ship's side, of the freight on the quantity delivered each day, for his lien would be given up by delivery of the goods.[1]

The law implies no contract on the part of the consignee, or indorsee, to pay freight, merely from the reception by him of the goods, but it amounts to evidence from which a jury would be warranted in finding that the consignee or indorsee contracted thereby to pay freight.[2]

If freight is made payable upon the performance of a condition, such as the right delivery of the cargo at a port named, no freight becomes due until the performance of such condition; unless the consignee dispenses with the performance of such condition, or voluntarily accepts the goods at an intermediate place, or renders the performance of the condition impossible.

Where by a bill of lading the goods were to be taken out within twenty-four hours after arrival, and the

[1] Black *v.* Rose, 2 Moore P. C. N. S. 277; 12 W. R. 1123.

[2] Sanders *v.* Vanzeller, 4 Q. B. 260; s. c. 12 L. J. Ex. 497; Zwilchenbart *v.* Henderson, 23 L. J. Ex. 234.

ship arrived at Havre, her port of destination, but was not permitted by the authorities to remain in harbour, or land her cargo at the quay, on account of the dangerous nature of the goods, which consisted of petroleum. It was shown that the quay would have been the proper place for the ship to have gone to be discharged at; the master took the vessel to Honfleur and Trouville, but being prevented from remaining in those ports for the same reason, he returned to Havre and stayed in the outer harbour for four days. No bill of lading having been presented, nor any request made to deliver the goods, he brought the cargo back to England. In a suit for freight, it was held, that though it might be the ordinary course, and that in the usual state of things in the port, the quay would have been the proper place for the ship to have gone to for her discharge, yet that this being an implied duty only, it did not amount to an engagement to go there at all events and under all circumstances, and that the master being ready and able to give delivery in the harbour, and having kept the goods a reasonable time there for the purpose, the freight had been earned.[1]

If the vessel is disabled by a tempest, or is otherwise physically incapacitated from performing her destined voyage, the shipowner is entitled, in the event of the goods being forwarded by the master to the port of discharge in another vessel, to the full amount of the freight originally contracted for,

[1] The cargo ex Argos, 42 L. J. Adm. 49.

although the freight paid by the master for the completion of the voyage by another vessel was less than that agreed on in the original bill of lading.[1]

If the outward and the homeward voyages are intended by the contract to be distinct, then the freight for the outward voyage will become due upon its completion, and will not be affected by the non-completion of the homeward voyage.[2]

As freight is payable upon the right and true delivery of goods at their port of destination, the circumstance of their being in a damaged condition, whether by the fault of the master or crew on the voyage, or they have become damaged from an intrinsic principle of decay naturally inherent in the commodity itself, whether active in every situation, or only in the confinement and closeness of a ship, freight will become payable for the same upon their delivery to, and acceptance by, the merchant.[3]

Thus, in the case of the ship "York," which was stranded off Margate and sank under water, whereby a great portion of her cargo, consisting of pepper, was greatly damaged by sea-water, but was got out of the ship by persons sent down by the charterers and taken to London in vessels; the ship was subsequently raised and brought to London with a small portion of the cargo still on board. The

[1] Shipton *v.* Thornton, 9 Ad. & E. 314; Matthews *v.* Gibbs, 3 El. & El. 300.

[2] Smith *v.* Wilson, 8 East. Rep. 437.

[3] Gibson *v.* Sturge, 24 L. J. Ex. 121.

merchants were held liable to pay the freight of the pepper delivered to and received by them, though greatly damaged by a peril of the sea.[1]

So, where tobacco was saved from shipwreck and accepted by the merchant, he was held liable to pay the freight, although part was so much damaged as to be of no value.[2]

And where chests of oranges on delivery in London were found to be much heated and damaged by the negligence of the master and crew in not having given the cargo sufficient ventilation on the voyage, this was held to be no answer to an action for freight for the chests delivered.[3]

If the consignee of goods accepts any benefit by the carriage, he cannot defend himself from the payment on the ground that the goods have been damaged by the master in carrying them, though the damage exceed the amount of the freight.[4]

Where, by a charter-party, a ship was to load at Colombo or Cochin, from the charterer's agents, a full and complete lading, and proceed to London and discharge there, fire and other dangers of the sea excepted, and a lump sum freight of £5,000 was to be paid after entire discharge and right delivery of the cargo. Part of the cargo was lost by fire, without any default of the master or crew, and the

[1] Hotham *v.* East India Co., cited in Abbott on Sh., 199.

[2] Lutwidge *v.* Grey, cited in Abbott on Sh., 324.

[3] Davidson *v.* Gwynne, 12 East. Rep. 381.

[4] Shields *v.* Davis, 6 Taunt. 65.

remainder was delivered in London. It was held, that the shipowner was entitled under the charter-party to the full lump sum freight.[1]

Where freight is made payable by the contract at a fixed rate, for a fixed period, as at so much per month, week, &c., the general rule is, that freight accrues due at the expiration of each of the periods specified, and continues payable if the ship is detained during the voyage, if such detention does not discontinue the voyage or suspend the contract, and does not proceed from the default of the shipowner.[2]

In such a case, if a ship freighted on time is captured and detained some time, and afterwards recaptured and liberated, and the voyage is then completed, the shipowner may recover freight for the whole period, as if the voyage had never been discontinued, and as if the detention had arisen from contrary winds.[3]

The stipulation in a charter-party, that freight shall be paid "subject to insurance," means merely, that freight is to be paid subject to deduction for premiums on insurance; but not that insurance by the owner is a condition precedent to his recovery of freight.[4]

Although readiness to deliver the goods at the

[1] The Merchant Shipping Co. *v.* Armitage, Law R. 8 C. P. 469; 43 L. J. Q. B. 24; Robinson *v.* Knights, 42 L. J. C. P. 211.

[2] Havelock *v.* Geddes, 10 East. Rep. 555; Moorsom *v.* Greaves, 2 Camp. 627; Ripley *v.* Scaife, 5 B. & C. 167.

[3] Moorsom *v.* Greaves, 2 Camp. 627.

[4] Jackson *v.* Isaacson, 27 L. J. Ex. 392.

place of destination is, in general, necessary to entitle the shipowner or master to the freight, yet with respect to living animals, whether men or cattle, which may die during the voyage, without fault or neglect on the part of the persons belonging to the ship; it is said, that if there is no express agreement whether the reward is to be paid for lading, or for transporting them, freight is payable as well for the dead as for the living. If the agreement was to pay for lading and undertaking to carry them, their death will not deprive the shipowner or master of the reward. But if the agreement was to pay freight for transporting them, then no freight is due for those that die on the voyage, because as to them the contract is not performed.[1]

Cases in which it has been held freight is not payable.

If the shipowner fails to carry the goods for the merchant to the destined port, the freight is not earned.[2]

If freight is made payable upon the performance of a condition as the right delivery of the cargo at a port named, no freight becomes due until the performance of such condition, unless the consignee dispenses with the performance of such condition, or voluntarily accepts the goods at an intermediate place, or renders the performance of the condition impossible.

In the case of the "Soblomsten"[3] the following

[1] McLach. on Sh., 397; 1 Kay on Sh., 297.

[2] Dakin *v.* Oxley, 33 L. J. C. P. 115.

[3] Law R. 1 Adm. 293; see also Hunter *v.* Princep, 10 East. Rep. 378; Mulloy *v.* Backer, 5 East. Rep. 316.

rule was laid down, that no freight is payable if the owner of the cargo against his will is compelled to take the cargo at an intermediate port.

Thus, where a cargo of rice shipped at Batavia, was by the bill of lading to be delivered at Rotterdam, to the plaintiff, he paying freight for the same. The vessel having encountered a hurricane, was compelled to put into the Mauritius, where the rice having been found to be damaged, and in a state of rapid putrefaction, was, of necessity, sold by the master, who acted *bonâ fide*, but without the knowledge of either the shipper or the shipowner. It was held, under these circumstances, that no freight was due, for the shipowner was not ready to carry forward the goods to the port of destination in his own or another ship, and consequently no inference could arise that the shippers were willing to dispense with the further carriage, and accept the delivery at the intermediate, instead of the destined, port.[1]

So, where a ship was chartered by the defendants for a voyage from Liverpool to the Havana, and loaded by them as a general ship, the freight being payable to the master. She went aground on the coast of Ireland, but subsequently she was got off with her cargo, both being damaged. S., who represented the freighters, visited the vessel, and was requested by the master "to act on behalf of the owners to the best of his judgment and ability." S. caused the cargo to be taken out and sent back to Liverpool in

[1] Vlierboom *v.* Chapman, 13 L. J. Ex. 384.

another ship, which he himself engaged for that purpose. The ship went to Dublin, and was there repaired. When the goods arrived at Liverpool, the charterers, on account of their damaged condition, determined to sell them. Before the sale took place, however, the master claimed the entire freight on the goods to the port of destination, or that they should be detained to proceed in his vessel when she was repaired. The defendants refused to accede to this, and proceeded to sell the goods. In an action by the master against the defendants for wrongfully preventing him from carrying the goods and earning freight, the jury found, in effect, that the course taken by the charterers was the reasonable one to take, having regard to the interests of all parties concerned, and that no freight was payable by them as charterers.[1]

The mere shipment of the goods may amount to an implied contract on the part of the shipper to pay the shipowner a reasonable rate of freight for the carriage; but where two charter-parties were entered into, each in ignorance of the other, and the bill of lading was capable of being applied to the one charter-party as to the other, it was held, that the bill of lading, being ambiguous, was neither a contract nor evidence of a contract to pay freight.

Thus, where the master of a ship chartered her to L., a ship-broker, to carry a quantity of iron at a tonnage scale. By the terms of the charter-party,

[1] Blasco v. Fletcher, 32 L. J. C. P. 284.

freight was to be paid on signing bills of lading, the owner to have an absolute lien for freight. L. re-chartered the vessel to T., on the same terms except as to freight, which was higher than the first charter-party. Neither the master nor T. knew of the charter-party entered into by the other. T. shipped the iron and obtained bills of lading for the same, which was to be delivered, freight being payable as per charter-party. The master did not claim the freight on signing the bills of lading, and delivered the cargo without insisting upon his lien. L. in the meantime obtained the freight due from T., and becoming bankrupt, the freight due under his charter-party was not paid to the shipowner. It was held, that the shipowner was not entitled to recover freight from T. as shippers of the iron, inasmuch as no contract could be implied on the part of T. to pay freight to the shipowner, both parties having made a mistake as to the charter-party referred to in the bills of lading, and were consequently never *ad idem*.[1]

Where the period is fixed at which the freight is to become payable, as at the time of the arrival of the ship at her first destined port, this being a condition precedent to the owner's right to recover freight, none is payable where the vessel does not arrive at the first destined port.[2]

If the freight is made payable on the arrival and discharge of the ship at a particular port, and the

[1] Schmidt *v.* Tiden, 43 L. J. Q. B. 199.

[2] Gibbon *v.* Mendez, 2 B. & Ald. 17.

voyage is interrupted by the seizure of the ship, and on the vessel being liberated the shipowner offers to complete the voyage, the charterer's refusal to do so does not entitle the shipowner to freight; for if the owner had done all that he offered to do, still it would have amounted at most only to an endeavour on his part to prosecute and complete the voyage, and to procure, as far as in him lay, the arrival and discharge of her at her destined port.[1]

If the master abandons his vessel, as where she becomes a derelict, he loses all right to freight, or to carry on the cargo. Thus, where a ship damaged in a collision was abandoned by her crew, and afterwards saved and brought into a port, and the shipowner offered to take the cargo to the port of destination. Held, that the contract between the shipowner and the owner of the cargo was put an end to by the abandonment, and that the shipowner was not entitled to any freight.[2]

By a bill of lading for cement shipped for Sydney, freight was to be paid within three days after arrival of ship, and before the delivery of any portion of the goods specified in the bill of lading. On the day of arrival at Sydney, the ship caught fire, and had to be scuttled. When the ship was raised, it was found that the cement was utterly destroyed by the sea water. Held, in an action for freight by the shipowners against the shippers and consignees of this cement,

[1] Smith *v.* Wilson, 8 East. Rep. 444.

[2] The Kathleen, 43 L. J. Adm. 39.

that the freight upon the special contract was due only in the case of the plaintiffs being ready and willing to deliver the cement in specie during the three days after arrival of the ship.[1]

Freight how calculated.

The mode of ascertaining the amount of freight is as various as the contracts on which it depends.

When goods are conveyed by a general ship, the rate of freight is fixed, either by express agreement, or by the usage of trade.

In the case of a charter-party, if the stipulated payment is a gross sum for an entire ship, or an entire part of a ship for the whole voyage, the gross sum will be payable, although the merchant have not fully laden the ship; and if a certain sum be stipulated for every ton or other portion of the ship's capacity for the whole voyage, the payment must be according to the number of tons which the ship is proved capable of containing, without regard to the quantity actually put on board by the merchant.[2]

But evidence is admissible to show that the cargo supplied is a full and complete cargo, according to the custom of the port of loading.[3]

Where the ship was described in the charter-party as being "of the measurement of 180 to 200 tons or thereabouts," it was held to be no excuse

[1] Duthie *v.* Hilton, 3 Asp. Mar. Law Ca. 166.
[2] Hunter *v.* Fry, 2 B. & Ald. 421.
[3] Cuthbert *v.* Cumming, 24 L. J. Ex. 310.

for not loading her that her tonnage was 257 tons only.[1]

But if the merchant has stipulated to pay a certain sum per cask, or bale of goods, the payment must be in the first place according to the number of casks, or bales, shipped and delivered,[2] and if he has further covenanted to furnish a complete lading, or a specific number of casks or bales, and failed to do so, he must make good the loss which the owners have sustained by his failure.[3]

If an entire ship be hired and the burthen thereof expressed in the charter-party, and the merchant covenant to pay a certain sum for every ton, &c., of goods that he shall put on board, but do not covenant to furnish a complete lading, the owners cannot demand payment for more than the quantity of goods actually shipped.[4]

Where the merchant engages to pay a certain sum for every month, week, or other period of the voyage, the risk of the duration falls upon the merchant: and in the absence of any stipulation to the contrary,[5] the computation begins from the day on which the ship breaks ground in prosecution of the voyage,[6] and continues during the course of it, inclusive of unavoidable delays not occasioned by the act or

[1] Windle *v.* Barker, 25 L. J. Q. B. 349.
[2] McLach. on Sh., 422.
[3] The Southampton Steam Colliery Co. *v.* Clarke, Law R. 6 Ex. 53.
[4] McLach. on Sh., 423.
[5] Fenwick *v.* Boyd, 15 M. & W. 632.
[6] Curling *v.* Long, 1 B. & P. 634, 636.

neglect of the owners or master, or by such circumstances as work a suspension of the contract for a particular period. Thus, freight in such a case is payable for the time consumed in necessary repairs during the voyage, if it do not appear that the ship was insufficient at the outset, or that there was any improper delay in repairing her.[1]

Where the ship is freighted by the month, a calendar, not a lunar, month is to be understood.[2]

When the parties have stipulated for a full and complete cargo of particular kinds of goods, to be carried respectively at specified rates of freight, and, as the event may be, the ship is sent home empty, or only part loaded, or is loaded in whole or in part with goods to which the rates are not applicable, the following are the rules upon which freight is calculated :—

Where the intention of both parties to the contract is obvious, that freight should be earned, and if that is rendered altogether impossible or partially nugatory through fault of the freighter, damages to compensate the loss are recoverable by the shipowner.[3]

The measure of damages is determined not by what is reasonable, but by what is stipulated specifically between the parties, who thereby evince an intention to ascertain their rights and obligations, even in those cases in which they contract for

[1] Ripley *v.* Scaife, 5 B. & C. 167; Havelock *v.* Geddes, 10 East Rep. 555.

[2] Moorsom *v.* Greaves, 2 Camp. 627; Jolly *v.* Young, 1 Esp. 186.

[3] Gumm *v.* Tyrie, 34 L. J. Q. B. 124.

power, in addition, to load "other lawful merchandise," or "other goods," without appending thereto any particular or general rate of freight.[1]

Generally speaking, where there are several ways in which the contract might be performed, that mode is assumed as the measure of damages, which is least burthensome to the defendant, and least profitable to the plaintiff; subject, however, to any exception expressly provided for by the parties in their contract.

The cases of Thomas *v.* Clarke,[2] and Gether *v.* Capper,[3] elicited the general principle, now an established rule of law, that by all such contracts the parties clearly evince an intention that for other goods besides the enumerated articles the shipowner is entitled to freight, the amount of which is to be determined not upon a quantum meruit, but in accordance with the rates specifically mentioned in their contract.[4] In the absence of any express contract for freight, the remuneration will be determined by what appears upon evidence of the current rate of freight at the time between the same ports, to be reasonable.[5] Freight for goods stowed in the cabin is not to be governed by the rate applicable to the rest of the cargo.[6]

[1] Gether *v.* Capper, 24 L. J. C. P. 69, 71.

[2] 2 Starkie, 450. [3] 24 L. J. C. P. 69.

[4] Warren *v.* Peabody, 19 L. J. C. P. 43; Cockburn *v.* Alexander, 18 L. J. C. P. 74.

[5] Miller *v.* Woodfall, 27 L. J. Q. B. 120; s. c. 8 El. & Bl. 493.

[6] Micheson *v.* Nicol, 21 L. J. Ex. 323; Mitchell *v.* Darthez, 2 Bing. N. C. 555; s. c. 5 L. J. C. P. 154.

Respecting the freight to be charged on the weight or bulk of the cargo, whether it be on the quantity at the port of shipment or at the port of delivery, the general rule is, that where freight is payable by the ton, by admeasurements, by the package or barrel, or where different portions of the same cargo are shipped upon distinct and separate terms as to freight, freight must be paid for what is delivered.[1]

It has been held that the words, "Freight payable on the intake measure of the quantity delivered," in a charter-party, means that the freight to be paid was on the measure put upon the timber when measured at the port of loading, and not on the quantity delivered, measured according to the intake mode of measurement, at the port of discharge.[2]

If goods increase in bulk on the way, freight is due only on the amount shipped.[3]

If freight is payable by net weight delivered, "the shipowner is entitled only to freight on the amount delivered."[4]

As a general principle, freight, in the absence of special agreement to the contrary, becomes payable only on so much cargo as has been both shipped, carried, and delivered.

[1] Ritchie *v.* Atkinson, 10 East. Rep. 295; Christy *v.* Row, 1 Taunt. 300.

[2] Spaight *v.* Farnwarth, 49 L. J. Q. B. 346.

[3] Gibson *v.* Sturge, 24 L. J. Ex. 121; Tully *v.* Terry, 42 L. J. C. P. 240.

[4] Coulthurst *v.* Sweet, Law R. 1 C. P. 649; Buckle *v.* Knoop, Law R. 2 Ex. 125, 333.

If less has been shipped than has been delivered, as in the case of cargoes which heat under seawater damage, freight is payable on the lesser quantity shipped. If less has been shipped and carried than has been delivered, as, for instance, in the case of goods which are compressed during the voyage and expand on being unloaded, freight is payable on the compressed and not on the expanded measurements. If, on the other hand, less has been delivered than shipped, as in the case of goods lost on the way, then freight would be payable only on the quantity delivered.[1]

To whom freight is payable.

The owner of a ship has a right to commit to any person abroad the office of collecting the freight, and if the shipowner sends an order to a house abroad to collect the freight, that takes the freight out of the hands and control of the master.

The owner has undoubtedly the primary right to receive the freight, and to sue the consignees of the goods for it, and whether the master has any right to receive the freight from them as against his owners, will depend upon the question whether he has any lien upon the freight.[2] The master of a ship has no prospective lien on the freight, and cannot insist on having it paid to himself, although a payment to him, in the absence of any notice by the owner to the charterer to withhold it, would be a good and valid payment.

[1] Spaight *v.* Farnwarth, 49 L. J. Q. B. 348.

[2] Smith *v.* Plummer, 1 B. & Ald. 581.

So, where freight is payable generally under a bill of lading, or under a charter-party, which does not specify to whom freight is to be paid, the master cannot maintain an action for the freight if the owner demands and receives it.[1]

The shipowner will not lose the freight due to him even where the master signs bills of lading making it payable to others. Thus, where the agents of the charterers at the outward port made advances to the master, on condition of the ship taking goods home for them on the return voyage, under bills of lading making freight payable to them, or their assigns, at the port of delivery, and bills of that tenor were signed accordingly; it was held, the master acted in excess of his authority in signing such bills, and the shipowner's lien on the cargo for unpaid freight was not prejudiced thereby.[2]

If the owner part with his property in the vessel during the voyage, the freight is payable to him who is owner when it is earned,[3] and accruing freight passes to the mortgagee of a ship who takes possession before the conclusion of the voyage.[4]

If the owner charter his vessel to another, who puts her up as a general ship, the freight afterwards

[1] Atkinson *v.* Cotesworth, 3 B. & C. 647.

[2] Reynolds *v.* Jex, 13 W. R. 968.

[3] Morrison *v.* Parsons, 2 Taunt. 407.

[4] Dean *v.* M'Ghie, 4 Bing. 45; see Willis *v.* Palmer, 29 L. J. C. P. 194.

earned by her in that capacity is payable to the charterer, subject to the owner's lien.[1]

The effect of freight being made payable in a particular manner.

If the shipowner or master contracts by the bill of lading, charter-party, or otherwise, that the freight should be payable after the delivery of the cargo, or before the goods reach their destination, or within a certain fixed time after the sailing of the ship, or at a fixed time after the ship is reported inwards; the lien for freight will be destroyed.

Thus, where the freight was "to be paid on unloading and right delivery of the cargo, less advances in cash at current rate of exchange; one-half of the freight to be advanced by the freighter's acceptance at three months, on signing bills of lading"; the charterer gave his acceptance to the agents of the ship, who thereupon endorsed upon the bill of lading, "Received on account of the within freight £301 17*s.* 6*d.* as per charter-party." The charterer endorsed the bill of lading and forwarded it to the plaintiff at Alexandria, who demanded delivery of the goods on payment of the remaining half-freight. The charterer having become bankrupt, the master refused to part with the goods except on payment of the whole freight; and in an action against him to recover back the sum which had been paid under protest, it was held, that the defendant had no lien on the cargo for the half-freight represented by the charterer's

[1] Marquand *v.* Banner, 6 El. & Bl. 232; Small *v.* Moates, 9 Bing. 574.

acceptance, and that the plaintiff was entitled to recover the amount.[1]

So, where freight was to be paid at London two months after the ship cleared at the Custom-house, it was held, that the payment for hire of the ship being made quite independent of the delivery of any cargo, no question as to a lien for freight by the master arose, and the charterer was entitled to remove his goods from the vessel, upon paying all reasonable charges for such re-delivery.[2]

And where freight was to be paid on unloading and right delivery of the cargo in cash, two months after the vessel's inward report at the Custom-house, it was held, that as the freight was not payable until two months after the inward report, the shipowner had no lien on the cargo for the freight.[3]

When the owner is estopped by the rate of freight mentioned in the bill of lading.

As against an assignee for value, the owners are estopped by a statement in the bill of lading of the rate of freight, though merely nominal; or from denying that freight has been paid where the bill of lading contains a statement to that effect. For instance, where a bill of lading stated that the freight had been paid in Bengal, but the same, through the fault of the shipper, had never been paid, it was decided that the shipowners had no lien on the cargo,

[1] Tamvaco *v.* Simpson, Law R. 1 C. P. 363; Foster *v.* Colby, 28 L. J. Ex. 81.

[2] Thompson *v.* Small, 14 L. J. C. P. 157.

[3] Alsager *v.* The St. Katherine's Dock Co., 15 L. J. Ex. 34; Lucas *v.* Nockells, 4 Bing. 729; Oliver *v.* Muggeridge, 7 W. R. 164; Shand *v.* Sanderson, 28 L. J. Ex. 278.

and could not recover payment of the freight from the assignee of the bill of lading. But the owner of the ship has a lien on the goods of the charterer, or the freighter, which have been put on board under a charter-party of which he has notice, as long as the owner retains and holds possession of the ship.[1]

"Primage and average accustomed."

The bill of lading usually provides for the delivery of the goods on payment of freight with primage and average accustomed. The word "primage" was formerly used to denote a small payment to the master, and was in the nature of a gratuity which he was to receive to his own use for his care and trouble, unless he had otherwise agreed with his owners, and was made by the freighter to the master of the ship upon delivery of the cargo. This payment appears to be of very ancient date, and to be variously regulated in different voyages and trades. It was sometimes called the master's "hat money" or "pocket money." In virtue of long usage it maintained its place until lately, notwithstanding the jealousy of the common law, which allows no man to have an interest against his duty,[2] and was recoverable under the bill of lading, though not mentioned in the charter-party.

By the modern usage of trade the term "primage" no longer signifies the gratuity or reward which the

[1] The Mercantile and Exchange Bank *v.* Gladstone, Law R. 3 Ex. 233; Howard *v.* Tucker, 1 B. & Ad. 712; 9 L. J. K. B. 108; Campion *v.* Colvin, 3 Bing. N. C. 17; 5 L. J. C. P. N. S. 317.

[2] Thompson *v.* Havelock, 1 Camp. 527; Diplock *v.* Blackburn, 3 Camp. 43.

master receives. Gratuities are still given to ship-masters, but not as primage, though it may be still a question whether, relying on former decisions, a ship-master might not recover against a consignee or owner for primage. Primage is ordinarily fixed at a certain percentage on the freight, and in reality forms a portion of the freight which the shipowner receives: for in cases of general average it is the practice to deduct this percentage or primage from the value of the cargo for contribution. The cargo may be made responsible, and generally is made responsible, by the terms of bills of lading, for the master's gratuity, but not as for primage. This is one of those instances in which a term has not only survived its ancient use, but has come to be applied to something essentially different to that which at one time it signified. The ship-master nowadays receives his fee or gratuity, but the "primage accustomed" passes into the hands of his employer, forming virtually a portion of the hire of his ship. The ship-master is entitled to his gratuity where it is stipulated in the charter, and it may be recovered by an action at law; but if he were to sue for a percentage on the cargo, he would probably be met by a plea of the custom of the carrying trade, under which custom that percentage goes to the shipowner. By the custom or usage respecting primage, is meant the custom as to its payment or appropriation. In some trades the usage does not allow primage to be taken or charged; for instance, in the North

American trade it is not usual to charge primage on timber cargoes. And in the case of Vose *v.* Morton,[1] decided before the Supreme Judicial Court of Massachusetts in 1856, it was shown to be an universal and well understood practice to pay no primage in the American ports. In England, however, although bills of lading are drawn which do not stipulate for the payment of primage, yet the usage is the other way, and, as a general rule, the primage is stipulated for and paid; but always, as stated, to the shipowner. The ship-master has nothing to do with it, and never receives it except on account of his employer. His gratuity is a fixed sum, not a percentage, and to this he is considered to be entitled.

Average, usually named with primage, is scarcely now a reality; it denotes several petty charges, which are to be borne partly by the ship, and partly by the cargo, such as the expense of trimming, beaconage, and other trivial expenses of the shipowner, incurred in the navigation. The particulars which fall under this head and the mode of distributing the charge, depend entirely on usage.

This and the preceding article of primage are often commuted for a specific sum or a certain percentage on the freight.[2]

"Ship lost or not lost."

It is settled by the authorities that by the law of England, a payment in advance on account of freight

[1] 5 Gray 594; cited in Parsons on Sh., vol. 2, p. 4.

[2] McLach. on Sh., 419-497.

cannot be recovered back in the event of the goods being lost. Cockburn, C. J., in Byrne *v.* Schiller,[1] said, "I regret that such should be the law. It seems to me to be founded upon an erroneous principle, and to be anything but satisfactory. I am emboldened to say this upon finding that American authorities of the highest class have settled the American law upon a directly opposite principle, and also that the law of all other European nations is in conformity with the principle of the American law, and contrary to our law. It seems to have been so settled by the law of France and Germany for a very long period. Valin even doubts the wisdom and propriety of allowing any exception whatever to the rule that an advance on account of freight shall be repaid in the event of the goods perishing, and the freight being no longer payable. I see by Bedarride's great work upon commercial law, that at the time of framing the French Code de Commerce, it was very anxiously discussed whether such an exception should be introduced into the Code. He says that the freedom of contracts prevailed, and therefore that exception was inserted in the 302nd article of the Code, which provides, in the absence of any stipulation to the contrary, a payment in advance on account of freight shall be recovered back in the event of the freight not being earned by reason of the goods perishing."

In this case, the ship had been chartered for a

[1] 40 L. J. Ex. 179.

homeward voyage from Calcutta, with an option to the charterers to send her on an intermediate voyage, "freight to be paid as follows: £1,200 to be advanced to the master and to be deducted, together with 1¼ per cent. commission on the amount advanced, and cost of insurance, from freight on settlement thereof, and the remainder on right delivery at port of discharge." The master was also "to sign bills of lading at any current rate of freight required, without prejudice to the charter-party, but not under the chartered rates, unless the difference be paid in cash."

The charterers elected to send the vessel on an intermediate voyage, and paid the £1,200, and required the master to sign bills of lading below the chartered rates. The difference, amounting to £737, was demanded from them by the master, but they refused to pay it, claiming to set off against it the advances made on account of the vessel. The vessel was lost on her way to the intermediate port. It was held, that a payment in advance on account of freight could not be recovered, even though the voyage fail; and that, according to the terms of the charter-party, the payment of the difference was to be a payment in the nature of freight, so that if the defendants had paid the difference in advance, they would not have been entitled to recover it; and that therefore the shipowner was entitled to recover the amount from them, notwithstanding the failure of the voyage.

Where a stipulated sum is agreed to be paid for

freight, at all events at the port of lading upon the taking of goods on board to be carried on a voyage, the shipowner, if it is not paid, may recover the same from the shipper, notwithstanding the fact that the goods have been lost on the voyage, and, therefore, that as they have not been carried to their port of destination, freight, strictly speaking, had not been earned.[1]

When money for the carriage of goods by sea is payable at the port of destination, "ship lost or not lost," and the ship is wrecked upon the voyage, the shipowner has no lien upon the goods, although the money to be paid for the carriage thereof is described as "freight" in the bills of lading.

Thus, where goods were shipped on board the plaintiff's vessel, to be carried to L. under bills of lading whereby the freight was to be paid at L., "ship lost or not lost." Upon the voyage the plaintiff's vessel was totally wrecked, and they thereupon abandoned the adventure, and took no steps to save either the ship or cargo. The defendants, under the instructions of the underwriters, saved a portion of the goods mentioned in the bills of lading, and forwarded them to L. A dispute having arisen as to whether the plaintiffs were entitled to a lien for the freight mentioned in the bill of lading, a memorandum was drawn up between the plaintiffs and the defendants, stating that the plaintiffs having claimed a lien "for the original

[1] Andrew v. Moorhouse, 5 Taunt. 435.

freight upon the goods saved, without allowance for the forwarding freight and expenses," the defendants, the owners of such cargo, had agreed to deposit the amount of the plaintiff's claim to abide the event of an action. A special case having been stated for the opinion of the court, it was held, that upon the agreement the only question to be argued was whether the plaintiffs could lawfully claim a lien; that they were entitled to no lien, and that judgment must be given for the defendants. In this case it was doubted whether, under the circumstances which had happened, the plaintiffs were not entitled to recover the amount of the "freight" from the parties to the bills of lading.[1]

Certain goods were shipped at Liverpool for Sydney, New South Wales, deliverable under the bill of lading, to order or assigns, he or they paying freight for the same as per margin; and in the margin appeared the sums due for freight, but the following words were added: "freight payable in Liverpool to Æneas Macdonnell, one month after sailing, vessel lost or not lost." This bill of lading passed into the hands of the appellants, merchants in Sydney, as indorsees for value, and when the ship arrived, they demanded delivery of the goods, but the master refused this except on payment of the freight in the bill of lading, which had not been paid in Liverpool. Upon these facts the Judicial Committee of the Privy

[1] Nelson *v.* The Association for the Protection of Commercial Interests, 43 L. J. C. P. 218.

Council held that as it was money to be paid in advance, and therefore not freight, no lien existed under the circumstances of the case before them.[1]

"Conditions as per charter-party"

In Russell *v.* Niemann[2] the construction which the Court placed upon the words "paying freight for the said goods and all other conditions as per charter-

Note.—The author has been favoured by Mr. Robert Brown, Secretary to the Sunderland Shipowners' Society, with the following remarks on the subject of the clause "ship lost or not lost" in the bill of lading: "This is not an unusual clause when a ship takes in a general cargo and the freight is paid in advance. In such cases, the owner of the goods pays the premium on insurance of freight as well as on insurance of goods. In calculating the rate of freight he ought to pay, he deducts what he has to pay for insurance, and pays the shipowner that much less. He then, if so agreed, pays the shipowner freight in advance at the port of lading, or within a fixed time after sailing. If the ship be lost, the shipowner still gets his freight, and the owner of the goods having insured the freight as well as the goods, gets from the underwriters their full marketable value (*i.e.* prime cost and freight) at the port of discharge. This method of dealing becomes almost a necessity when a ship takes in a general cargo, consisting of various kinds of goods at various rates of freight. It is easy for each shipper to add freight to value and insure the whole of his own venture, but the shipowner, if the rates of insurance on different classes of goods varied, might find it difficult to agree with underwriters for an average rate. And further, it is often a convenience to have freight paid wholly or partially in advance, and any arrangement which involved repaying the advance in case of loss, would be very inconvenient. But by the method I have endeavoured to explain, every difficulty is removed, and the clause providing for payment of freight, whether the ship be lost or not lost, is in such cases essential to a well drawn charter. If the ship be lost, the freight is paid by the underwriter; if not lost, it is paid by the exporter; in either case the shipowner receives it."

[1] Kirchner *v.* Venus, 5 Jur. N. S. 395; 7 W. R. 455; How *v.* Kirchner, 6 W. R. P. C. 198.

[2] 34 L. J. C. P. 14.

party," was "that the words are to be taken as limited by the context to conditions *ejusdem generis* with that for the payment of the freight, namely, conditions to be performed by the person who receives the goods at the port of discharge, and not that the words are to be taken as introducing into the contract, by the bill of lading, all the provisions of the charter-party." In this case, the master relied upon the words "king's enemies" in the bill of lading, to protect him for not delivering the goods. In the charter-party the exception was "restraint of princes," and it was held that the master could not, for his further protection, incorporate these words into the bill of lading.

Where the bill of lading contains the words "paying as per charter-party," or "paying freight and all other conditions as per charter-party," the consignee will be liable for demurrage on the ground that the charter-party (which is to be read into the bill of lading) amounts to an absolute contract to pay demurrage.[1]

The true result of the authorities is, that a bill of lading in which the words "and all other conditions as per charter-party," follow the expression "on paying freight," or "paying for the said goods," or similar expressions, imports a liability on the part of the consignee of the goods under the bill of lading to pay the demurrage stipulated for by the terms of the charter-party to which it refers.[2]

[1] Porteous *v.* Watney, 47 L. J. Q. B. 644; Wegener *v.* Smith, 24 L. J. C. P. 25.

[2] Porteous *v.* Watney, 47 L. J. Q. B. 645.

Where a charter-party provided for the cesser of liability of B. and Co., the charterers of a ship, on loading and payment of advance freight at port of shipment; B. and Co. were consignees of the cargo, and the bills of lading made the cargo deliverable "unto order or assigns, he or they paying freight and other conditions as per charter-party." The cargo was duly loaded and the advances paid. In an action for balance of freight against B. and Co.: Held, that they were not liable, their liability on the charter-party ceasing on the completion of the loading, and no new liability being created by the bill of lading.[1]

Demurrage.

As freight is the compensation payable for the use of the ship from the time of the shipment of the goods until they are ready to be delivered at the port of delivery, so demurrage is a compensation payable for the improper detention of the vessel by

[1] Barwick *v.* Burnyeat Brown & Co., 3 Asp. Mar. Law Ca. N. S. 376.

Note.—If this decision were to be carried to its logical conclusion, no charterer under such a charter-party who held bills of lading and was consignee of the cargo he shipped, would be liable for freight, and the only means a master would have of enforcing payment, would be by keeping the cargo until he had received payment. It does not seem to have been suggested by or to the court, that the existence of the right of lien under the charter-party and the bill of lading, the act of the master in delivering without enforcing his lien, and the acceptance of delivery by the consignees, taken together, created an implied contract by the consignees to pay the freight on their getting the cargo. The fact of their being also charterers could scarcely affect their liability under such an implied contract, which arose at a subsequent period.—Ed. Asp. Mar. Law Ca.

the shippers, or their agents, after the goods might have been delivered.[1] Demurrage has been defined as an extended freight.[2]

The word "demurrage," no doubt properly signifies the agreed additional payment (generally per day) for an allowed detention beyond a period either specified in, or to be collected from, the instrument; but it also has a popular and more general meaning of compensation for undue detention.[3]

Where goods are shipped on board a general ship and there is no charter-party, the stipulation for demurrage is often effected by introducing words creating it, into the margin of the bill of lading. In the same way a claim for demurrage may be enforced against a consignee or an indorsee of the bill of lading, the master adding to the ordinary undertaking in the bill of lading to deliver the cargo on payment of freight, a condition that the consignee shall be liable to a certain rate for demurrage; or instead of inserting the condition expressly in the bill of lading, it is equally effective to import it into it by reference to the charter-party, of which it forms one of the stipulations: but in adopting that course, care must be taken to make the words of reference explicitly point to and include the particular condition.

Under the bill of lading alone, if it expressly makes the goods deliverable on payment of demurrage,

[1] Evans *v.* Forster, 1 B. & Ad. 120.

[2] Jesson *v.* Solly, 4 Taunt. 52.

[3] Lockhart *v.* Falk, 44 L. J. Ex. 105; Francesco *v.* Massey, 42 L. J. Ex. 75.

receipt of them by an assignee is, at common law, evidence of a promise to pay such demurrage as accrued due at the port of delivery by his fault,[1] and this notwithstanding any denial of his liability made at the time he accepted the goods.[2] But he is not therefore answerable for demurrage incurred at the port of lading; at all events not unless there was something very express to that effect in the bill of lading.[3]

The 18 and 19 Vict., c. 111, affirming any liability of the consignee or indorsee in consequence of his receipt of the goods, transfers the rights and liabilities of the contract contained in the bill of lading to the consignee or indorsee, and vests the same in him as if the contract had been made with himself.[4]

But if there is nothing whatever in the bill of lading with regard to demurrage which would amount to evidence of a contract, there is nothing for the statute to operate on, and no right of action in the master against the consignee or indorsee for demurrage, in consequence of his receipt of the goods thereunder.[5]

Where a charter-party is silent as to the time within which the cargo is to be unloaded at the

[1] Stindt *v.* Roberts, 17 L. J. Q. B. 166; Sanders *v.* Vanzeller, 4 Q. B. 260.

[2] Wegener *v.* Smith, 24 L. J. C. P. 25.

[3] Smith *v.* Sieveking, 24 L. J. Q. B. 257.

[4] Foster *v.* Colby, 28 L. J. Ex. 81; Shand *v.* Sanderson, 28 L. J. Ex. 278; McLach. on Sh. 490.

[5] Brouncker *v.* Scott, 4 Taunt. 1; Evans *v.* Forster, 1 B. & Ad. 118; Smith *v.* Sieveking, 24 L. J. Q. B. 257.

port of destination, the law implies that the merchant and the shipowner shall each use reasonable despatch in performing his part of the contract; and where the landing of the cargo by the merchant is rendered impossible by a cause over which he has no control, he is not liable to pay the damages for the delay.[1]

Unless otherwise stipulated, the computation of time begins with the arrival of the ship at the usual or designated place of discharge in the port of destination.[2]

In reckoning time under a stipulation for demurrage, days and running days mean the same thing, in the absence of any peculiar custom to the contrary, *i.e.* without excepting holidays. In the absence of any custom to the contrary, Sundays are to be computed in the calculation of the lay or running days, which mean consecutive days. Working-days exclude Sundays, Good Friday and Christmas-day, and Custom-house holidays. "Lying days" mean working-days, and exclude Sundays.[3] But weather-working-days exclude all days from the lay days in which cargo cannot be worked on account of the weather. When the number of lay days is fixed for loading or discharging, that number will be strictly

[1] Ford *v.* Cotesworth, 39 L. J. Q. B. 188.

[2] Kell *v.* Anderson, 12 L. J. Ex. 101; 10 M. & W. 498; Leer *v.* Yates, 3 Taunt. 387; Parker *v.* Winlo, 27 L. J. Q. B. 49; Bastifell *v.* Lloyd, 31 L. J. Ex. 413; Brereton *v.* Chapman, 7 Bing. 559; Niemann *v.* Moss, 29 L. J. Q. B. 206; 16 Jur. N. S. 775; Brown *v.* Johnson, 10 M. & W. 331.

[3] Commercial Steamship Co. *v.* Boulton, 3 Asp. Mar. Law Ca. N. S. 111.

adhered to and enforced, whether the merchant be to blame or not, and each individual consignee of any portion of a cargo of a general ship will be liable for the entire demurrage arising from the ship being delayed by such portion of the cargo not being taken delivery of.

Thus, where the defendant's portion of the cargo was stowed at the bottom of the hold, and in consequence of the consignees of the upper portions of the cargo not being ready to take delivery as soon as the ship was ready to discharge, the defendants were not able to clear their portion of the cargo within the time stipulated by the charter, according to which demurrage became payable by the conditions of the bills of lading. The ship was delayed for three days, and the plaintiff sued to recover three days' demurrage. It was held that the consignee was liable, under the bill of lading, for the whole demurrage, though only one of several consignees.[1]

If the ship is not discharged during the time allowed by the charter, then for every day and fraction of a day during which she is detained, the stipulated demurrage must be paid; for if not discharged within the minimum time allowed, the charterer must pay for the fraction of a day as if it was a whole day. Thus where, by the terms of a charter-party, the charterers agreed to load and discharge the ship as fast as she could work, but a minimum of seven days was to be allowed and ten days

[1] Porteous *v.* Watney, 47 L. J. Q. B. 643.

on demurrage over and above the said lying days, at £25 a day: the lying days having expired, the ship arrived in the docks on the 12th of May, and the charterers began to discharge her on the 13th at 8 A.M., and continued till 8 P.M. The next day, the 14th, they began again at 4 A.M., and finished at 8 A.M. It was held, that the owners were entitled to recover £25 in respect of the 14th, as if the defendants had been occupied during the whole of that day in discharging the ship.[1]

The consignee of a bill of lading which makes the goods deliverable to him or assigns, "paying for the said goods as per charter-party," does not, by taking the goods at the destination, make himself liable to pay for demurrage in the port of loading according to the rate stipulated in the charter-party, though there be an express stipulation for a lien on the goods for such demurrage.[2]

"Act of God."

This exception designates the immediate operation of purely natural agents, such as lightning, earthquake, and tempest, exclusive altogether of human intervention, but is not so extensive as to comprehend what is merely inevitable.[3]

The "act of God," when relied upon as a defence, must be the immediate cause of the loss and not remotely connected with it.

This was ruled in the case of Smith *v.* Shepherd,[4]

[1] Commercial Steamship Co. *v.* Boulton, 44 L. J. Q. B. 219.
[2] Smith *v.* Sieveking, 24 L. J. Q. B. 257.
[3] Forward *v.* Pittard, 1 T. R. 27.
[4] Smith *v.* Shepherd, cited in McLach. on Sh., 499.

in consequence of which it was sought to introduce a bill into Parliament limiting the liability of shipowners in all cases except that of negligence, but this measure having been rejected, the present exception was introduced into the bills of lading for the protection of shipowners.

The first words of the ordinary exception in the bill of lading are "the act of God." This limitation of liability exists at common law in the case of all common carriers, without any express agreement to that effect. A loss caused by a sudden gust of wind is within the exception.[1] But a loss caused by a mere accidental circumstance, as the tide lifting up a ship and pitching her on the rudder of another ship, is not within the exception;[2] neither is a loss caused by fire, which, although caused by no negligence on the part of the carrier, yet was not occasioned by lightning, within the exception.[3]

In Nugent *v.* Smith,[4] heard in 1876, which was an action to recover damages in respect of the loss of a mare, which, whilst in transit from London to Aberdeen in a steamer, sustained such severe injuries, partly from the rolling of the vessel in a storm of more than ordinary violence, and partly from her struggling caused by excessive fright, as occasioned her death. Cockburn, C. J., in delivering judgment,

[1] Amies *v.* Stephens, 1 Str. 128; Oakley *v.* The Portsmouth and Ryde Steam &c. Co., 25 L. J. Ex. 99; Kay on Sh., vol. 1, 411.

[2] Smith *v.* Shepherd, 11 Ex. 622.

[3] Forward *v.* Pittard, 1 T. R. 27.

[4] 45 L. J. Q. B. 697.

said, "It is somewhat remarkable that previously to the present case, no judicial exposition has occurred of the meaning of the term 'act of God,' as regards the degree of care to be applied by the carrier, in order to entitle himself to the benefit of its protection. If the fright which led to the struggling of the mare was in excess of what is usual in horses on shipboard in a storm, then the rule applies that the carrier is not liable where the thing carried perishes, or sustains damage, without any fault of his, by reason of some quality inherent in its nature, and which it was not possible for him to guard against. If, on the other hand, the fright was the natural effect of the storm and the agitation of the ship, then it was the immediate consequence of the storm, and the injuries occasioned by the fright are sufficiently closely connected with the storm; in other words, the act of God, to afford protection to the carrier. And it was held, that in order to come within the exception of loss by the act of God as applied to the liability of a common carrier, the loss need not have been caused directly and exclusively by such a direct, and violent, and sudden, and irresistible act of nature as the carrier could not by any amount of ability foresee or (if he could foresee it) could not by any amount of care and skill resist so as to prevent its effect."

A loss is a loss by the act of God if it is occasioned by the elementary forces of nature unconnected with the agency of man or other cause, and a common carrier is entitled to immunity in respect of loss

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so occasioned, if the loss is occasioned partly by the act of God as above defined, and partly by some other cause, which if it had been the sole cause of the loss, would have furnished a defence. The carrier would be entitled to immunity in respect of such loss if he can show that it could not have been prevented by any amount of foresight, pains and care reasonably to be required of him.[1]

"The Queen's enemies."

The "queen's enemies" or the "king's enemies" means the enemies of the carrier's sovereign, whatever title he may enjoy, whether queen, emperor, president, duke, doge, or aristocratic assembly, and lest there should be anything left out, "restraint of princes" comprehends every case of interruption by lawful authority.

Thus, where a Mecklenburg ship loaded at Odessa for the United Kingdom, to call at Cork or Falmouth for orders. The ship proceeded to Falmouth and was there ordered to Limerick to discharge, and the master was prevented from doing so by the act of the enemies of his sovereign, the Duke of Mecklenburg-Schwerin. It was held that the enemies of the sovereign of the carrier were included in the words "the king's enemies."[2]

Capture by an enemy in the exercise of war between two nations, according to the law of nations, wholly divests the property of the owner,

[1] See Story on Bail, s. 25.

[2] Russell v. Niemann, 34 L. J. C. P. 10; 10 L. T. 786; 13 W. R. 93.

and transfers it to the captor or the sovereign of his State at the period named.[1]

"Pirates, Rovers."

Losses arising from pirates were formerly included in our maritime law amongst the general perils of the seas,[2] and probably would still be held to be so; though as piracy is now one of the enumerated perils in the bill of lading, the point is of less importance.[3]

Under the risk of pirates and rovers, the underwriters are, it seems, liable for a mutinous seizure and carrying away of the ship by the crew.[4] But where emigrant cooly passengers murdered the captain and portion of the crew, and took possession of the vessel and ran her ashore in order to escape, this act on their part was held to be an act of piracy, and one of the perils insured against.[5]

Whatever would be robbery by land will be piracy at sea, and assaulting a ship on the high seas and obliging the captain to redeem her for so much, or for a certain part of the cargo, is considered clearly to be piracy.[6] So, where a ship laden with a cargo of corn was forced by stress of weather into Elly Harbour, where there happened to be a great scarcity of corn, the people came on board the ship in a tumultuous manner, took the government of her from the captain

[1] Atk. on Sh., p. 118.
[2] 3 Kent's Com., p. 302; Abbott on Sh., 289.
[3] Arnould on M. I., vol. 2, p. 841.
[4] Dixon *v.* Reid, 5 B. & Ald. 597.
[5] Palmer *v.* Naylor, 23 L. J. Ex. 323.
[6] Lex Mer. 149, 242.

and crew, and weighed her anchor, by which she drove on a reef of rocks, where she was stranded, and they would not leave her until they had compelled the captain to sell all the corn at a certain rate, which was about three-fourths of the invoice price. It was held, that this loss fell within a capture by pirates.[1]

Capture by pirates, who are merely robbers at sea, does not divest the property of the owner, and in a very early period of our history a law was made for the restitution of property so taken, if found within the realm, belonging as well to strangers as to Englishmen.[2]

"Robbers"

The term "robbers" means loss by violence; thus where an action was brought to recover the value of a box of gold dust forming part of a consignment of 11 boxes from Panama to London, under a bill of lading excepting "the act of God, the Queen's enemies, robbers, fire," &c. &c. The box in question having been stolen secretly from the railway truck between Southampton and London, the shipping company were held not liable for the loss, as the box, though stolen, had not been removed by force, which was the exception provided for in the bill of lading.[3]

Where a vessel, in consequence of having sprung a leak, put into an intermediate port and discharged

[1] Nesbitt v. Lushington, 4 T. R. 783.
[2] 27 Edw. III., St. 2, c. 13; Y. Bk. 2 Rich. 3, 2.
[3] De Rothschild v. The Royal Mail Steam Co., 21 L. J. Ex. 273.

her cargo, portion of which was stolen from the warehouse; in an action on the policy for a constructive total loss, it was held "that the loss by robbers, although not expressly mentioned in the policy, was one of the perils insured against."[1]

"Thieves" The term "thieves" is a word of ambiguous meaning, and this being the case, such a construction must be put upon the word as is most in favour of the shipper, and not most in favour of the shipowner. It is an exception framed by the shipowner for his own benefit, and it behoves him to use such language as to make clear what he holds to be an exception under it. It is not reasonable to suppose, where nothing is added to the word to qualify or limit or define its meaning, that the shipper of the goods intended that he should be unprotected against thefts by the crew or persons on board the ship. The word will not, therefore, comprehend thefts by passengers or members of the crew.

So, where diamonds which were being conveyed from Liverpool to New York, were stolen when on board the ship, either on the voyage, or after her arrival in port, before the time for delivery arrived, but there was no evidence to show whether they were stolen by one of the crew, or by a passenger, or after her arrival by some person from the shore. It was held, that as it did not appear whether the theft was by one of the crew or by a passenger, it

[1] Dwarkadass Lalubhai v. Adamali Sultanali, 3 Bom. H. C. Rep. A. C. J. 1.

was enough that the theft might have been committed by a passenger, and it was for the defendants to show whether the case was or was not within the exception, and, therefore, that it lay upon them to show that the act of theft had been committed by some one outside the ship, and that the onus was not upon the plaintiffs to show the contrary.[1]

"Restraint of Princes, Rulers, or People."

If the Government of the country to which the ship and cargo belong, should prohibit the exportation, or importation, of the particular commodities that compose the cargo, or by the terms of the contract are destined to compose it, performance being thus rendered illegal by an authority to which both parties owe allegiance, damages for non-performance cannot be claimed by either. The common exception of "the restraint of princes and rulers" applies only to the case of the master, unless it is expressly stipulated to be mutual.[2] For if a merchant hires a ship to go to a foreign port, and covenants to furnish a lading there, a prohibition by the Government of that country to export the intended articles neither dissolves the contract, nor absolutely excuses a non-performance of it.[3]

The term "restraints of princes" &c. does not

[1] Taylor *v.* The Liverpool and Great Western Steam Co., 43 L. J. Q. B. 205.

[2] Sjoerds *v.* Luscombe, 16 East. Rep. 201; Bruce *v.* Nicolopulo, 24 L. J. Ex. 321.

[3] Blight *v.* Page, 3 B. & P. 295 note; Touteng *v.* Hubbard, 3 B. & P. 298.

apply until the ship has been loaded and the voyage commenced.[1]

The restraint meant by this exception must be an actual and operative restraint, and not a merely expected and contingent one. With reference to any contracts which were fairly and lawfully made at the time, if from a change in the political relations and circumstances, they have become incapable of being any longer carried into effect, without derogating from the clear public duty which a British subject owes to his sovereign, and the state of which he is a member, the non-performance of a contract in a state so circumstanced is not only excusable, but a matter of peremptory duty and obligation on the part of the subject. But in order to found this new public duty which is to supersede the performance of his former private one, it is necessary that an actual change in the political relations of the two countries should have taken place; and that the danger to result to the public interests of his own country from an observance of the contract should be clear, immediate, and certain.

In short, such a state of circumstances must be shown to exist as that the contract is no longer capable of being performed by him without a criminal compromise of his public duty. So, where a vessel left St. Petersburg upon a general rumour of a hostile embargo being laid on British ships by the Russian Government, it was held, that this did not justify a breach of contract by the master, though the latter

[1] Crow v. Falk, 8 Q. B. 467.

acted *bonâ fide* and under a reasonable and well grounded apprehension at the time.[1]

All bills of lading should contain a proviso exonerating the shipowners from restraints of Courts of law. In Finlay *v.* The Liverpool and Great Western Steam-ship Company, on demurrer in the Court of Exchequer,[2] it was alleged that certain goods had been obtained by fraud, and the bills of lading endorsed to a third party. Before the ship left New York, the person who claimed to be the rightful owner demanded the goods from the agent of the ship, and on his refusing to deliver the same, the master of the ship was sued in the New York Supreme Court, and adjudged and compelled to deliver the goods to the right owner. The claimant in England under the bill of lading sued the shipowners for non-delivery, and the plea of "restraint of princes," which was one of the conditions in the bill of lading, was urged. The Court of Exchequer held that the action of a Court was not the "restraint of princes." The action was founded on contract, and the Court could not see how the act of any court of law, or any judicial tribunal, deciding that the defendants should hold possession of and deliver the goods to the order of the true owners, could relieve the shipowners from their contract, unless such an act or decision of a Court or judicial

[1] Atkinson *v.* Ritchie, 10 East. Rep. 530.

[2] 3 Asp. Mar. Law Ca. 487. See also Howland *v.* Greenway, 22 How. 491; Ang. on Car., s. 226 *a*.

tribunal had been expressly excepted in the bill of lading.

"People." The word "people" means the supreme power, that is, the ruling power of the country, whatever it may be. Therefore, where a mob or a multitude of people seize a vessel and compel the master to sell the cargo, this, though an act of piracy, will not come under the present exceptions.[1]

"Barratry of master and mariners." It does not seem to have been anywhere precisely ascertained, from what source the term barratry has been derived. Indeed, the derivations of barratry have rather tended to confound than to throw any light upon the subject, for its root has been so frequently altered, according to the caprice of the particular writer, that it is impossible to decide which is the true one. The English, however, most probably have taken it from the French barrateur, which is to be traced to the Italians; but where the latter found this word is a thing by no means clear. Whatever the derivation may be, the word seems to have been originally introduced into commercial affairs by the Italians, who were the first great traders of the modern world.[2]

Barratry may be termed any fraudulent or criminal conduct against the owner of the ship or goods by the master or mariners, in breach of the trust which is either expressly or impliedly reposed in them, and to the injury of the owners; although it may not be

[1] Nesbitt v. Lushington, 4 T. R. 783.
[2] Atk. on Sh., 32.

done with intent to injure them, or to benefit, at their expense, the master or mariners, and therefore a master is not warranted in going into an enemy's settlement to trade, even where permitted, though his cargo could be more speedily and cheaply completed there: and if the ship is seized and confiscated in consequence of such act, the same is barratrous, for trading with an enemy is an illegal act[1]; except in this and similar cases, fraud is a necessary ingredient in barratry.[2] It has been held, that fraud and barratry were in effect words of co-extensive import; that is, that barratry included every species of fraud in relation of the master to his owners, by which the subject-matter insured might be endangered.[3] Thus, if the master sail out of port without paying port dues, whereby the goods are forfeited, lost, or spoiled, that is barratry.[4]

Barratry is an act of fraud which in the sense used in policies can be committed only against the owner of the ship,[5] and is not directed against the owner of the goods which are lost; and, however innocent may be the owner of the goods who seeks to recover against the underwriter, yet if the owner of the ship concurs in the act which caused the loss, it takes from it the character of barratry; neither will it be so where, owing to the negligence of the owner,

[1] Earle *v.* Rowcroft, 8 East. Rep. 126.
[2] Phyn *v.* The Royal Exchange Assurance Co., 7 T. R. 505.
[3] Knight *v.* Cambridge, 1 Str. 581.
[4] Stamma *v.* Brown, 2 Str. 1174.
[5] Nutt *v.* Bourdieu, 1 T. R. 323.

the mariners take smuggled goods on board, in consequence of which she is seized and confiscated[1]; but otherwise where the master smuggled goods on board without the owner's knowledge.[2] Where the owner of a ship, by his contract, places the entire vessel for a time under the sole control of the freighter, during that time any act of the owner of the vessel, done in fraud of the freighter, is an act of barratry.[3] It equally amounts to barratry if the master, being a part-owner, fraudulently sells the ship and cargo, and applies the proceeds to his own use.[4]

A deviation, if for a fraudulent purpose, is barratry[5]; not otherwise.[6] If the master is compelled, by the mutinous violence of the crew, to deviate from his course, this will be barratry of the mariners, but not of the master.[7] It will be barratry if the vessel is lost by the fraudulent misconduct of the master.[8] Also if the master acts contrary to instructions, though for the benefit of the owner, in consequence of which the vessel is lost.[9]

Barratry at common law is a felony and punishable as such.

As the shipowner is exempted from liability by

[1] Pipon *v.* Cope, 1 Camp. 434.
[2] Havelock *v.* Hancill, 3 T. R. 277.
[3] Soares *v.* Thornton, 7 Taunt. 627.
[4] Jones *v.* Nicholson, 23 L. J. Ex. 330.
[5] Dixon *v.* Reid, 5 B. & Ald. 597; Ross *v.* Hunter, 4 T. R. 33.
[6] Phyn *v.* The Royal Exchange Assurance Co., 7 T. R. 505.
[7] Scott *v.* Thompson, 1 B. & P. N. R. 181.
[8] Arcangelo *v.* Thompson, 2 Camp. 620.
[9] Moss *v.* Byrom, 6 T. R. 379.

the present exception from all losses arising from the barratry of the master or mariners, the owner of the goods looks to the underwriter in such cases, and the instances are very rare in which the question, as between the shipowner and the shipper, under the bill of lading, has been judicially determined: and in those cases where the insurer has successfully defended an action on the policy on the ground that the loss did not arise from the barratry of the master or mariners, the same has been covered by other exceptions in the bill of lading. Thefts and pilfering of the cargo by the crew are not uncommon, but there is no recorded instance in which pilfering has been held to amount to barratry; such loss would therefore have to be borne by the shipowner.

It has been ruled that an act of the master, not amounting to a fraudulent violation or wilful abandonment of his duty to his owner, is not barratry.[1] So, though by section 296 of the Merchant Shipping Act, 1854, it is the duty of vessels approaching to port their helms; and section 299 enacts that damage arising from the non-observance of the rules shall be deemed to have been occasioned by the wilful default of the person in charge of the deck at the time, &c., yet a loss occasioned to goods by a collision is not barratry, and the holder of the bill of lading will be entitled to recover against the shipowner for non-delivery of his goods, arising from

[1] Williams v. Suffolk Insurance Co, 3 Summers 514.

their being totally lost in a collision occasioned by the unskilful navigation of the master.[1]

The Kidnapping Act, 1872, (35 and 36 Vict., c. 19,) having prohibited the carrying of Polynesian native labourers in ships without a license, under penalty of forfeiture of the ship, a master who, without the authority of his owners, but with a knowledge of the prohibition, ships and carries native labourers, and so brings about the seizure and condemnation of his ship, commits an act of barratry, in respect of which his owners may recover against their underwriters.

Where a master ships and carries Polynesian native labourers without a license, against the provisions of the Kidnapping Act, 1872, proof that the master, although he may never have seen the Act itself or the proclamation thereof in the Australasian Colonies, was informed before shipping the labourers, that such an Act existed, and that it was illegal to carry them, is sufficient evidence to justify a jury in finding that he shipped and carried the labourers wilfully and with knowledge of the prohibition, so as to make his act barratrous.[2]

"Loss or damage from machinery."

Notwithstanding this and similar exceptions in the bill of lading, which may cover a loss or cause of injury to the cargo, if it can be proved that such loss was occasioned by the negligence of the shipowner or master, they will be liable for the same.

[1] Grill *v.* The General Iron Screw Colliery Co., Law R. 3, C. P. 476; 37 L. J. C. P. 205.

[2] The Australasian Insurance Co. *v.* William Townley Jackson, 3 Asp. Mar. Law Ca. N. S. 26.

Thus, where certain bales were shipped on board a steamer in good order and condition, and it appeared that they were injured by oil; that there was no oil in the cargo; and that the bales had been stowed near a donkey-engine employed in loading and unloading cargo, and which used to be lubricated with oil. It was held, that the damage arose from negligence, and that the exception of machinery in the bill of lading did not exonerate the shipowners from liability.[1]

This exception will not cover a loss arising from the breaking of the chain used to discharge cargo, as such a chain does not come under the term machinery, which applies only to the machinery by which the vessel is propelled.[2]

If salvage services become necessary from the breaking down of any portion of the machinery, and are rendered to the ship, whereby the cargo is saved, the owners of the salving vessel, though also owners of the vessel salved, will be entitled to recover from the owners of the cargo for the services rendered: the accident coming within the excepted perils mentioned in the bill of lading as "accidents of machinery."

Thus where the "Miranda," a screw steam-vessel, was bound on a voyage from Patras to London, and the "Roxana" was proceeding on her voyage from London to Genoa; when the vessels were in sight of each other and about eighteen or twenty miles to

[1] Czech *v.* Genl. St. Nav. Co., Law R. 3 C. P. 17; 37 L. J. C. P. 3.
[2] The Galley of Lorne, Mit. Mar. Reg., Feb. 11, 1876.

the south-east of Cape St. Vincent, the master of the "Miranda" signalled to the "Roxana" for assistance, the crank-shaft of her engine being so nearly broken that another turn or two of the propeller would have separated it, and the "Roxana," as requested, towed the "Miranda" to Gibraltar without any danger to herself or her crew, the weather being fine at the time. Both these vessels belonged to the same owners. In an action against the owners of the cargo for salvage services, Sir Robert Phillimore, in delivering judgment, said: "The defences are as follows:—That the owners of the 'Roxana' were bound by their contract with the owners of the cargo laden on board the 'Miranda,' to carry the cargo of the 'Miranda' to London, and that they would not have fulfilled this contract unless they had rendered assistance to the 'Miranda,' which assistance was to be considered as an act done for the sole benefit and advantage of the owners of the 'Roxana.' It was said that it was implied in the contract between the owners of the 'Roxana' and the owners of the 'Miranda,' that there was warranty of seaworthiness of the 'Miranda,' that the accident arose from the breach of warranty, and that the owners of the 'Roxana' therefore were liable for all the consequences of such breach, and so were not entitled to salvage remuneration for averting a loss which, if it had happened, would havef allen upon themselves. It is replied to those defences that the contract is to be found in the bills of lading, admitted

to have been made between the parties. If I am to decide the question whether the owners of the 'Roxana' are entitled to salvage reward, I must first determine whether they are so entitled apart from the question of their being the owners of the vessel towed. I think unquestionably they rendered the salvage service entitling them to salvage remuneration, unless circumstances have rendered it impossible for them to recover that remuneration. It becomes necessary, therefore, to decide the question of law. The contract set out in the bills of lading is that the 'Miranda' should take her cargo on board and deliver it at the port of London, in the like good order and condition as shipped; then follow many exceptions which are to be considered as affording a justification for the non-performance of the contract, and among those exceptions is included one about which there has been much discussion. This exception, which is contained alike in all bills of lading, though the exceptions are not always expressed in precisely the same words, are as follows, "accidents from machinery." If I had to determine the case upon the point raised with reference to the alleged implied warranty of seaworthiness, I should be of opinion that the burthen of proving the breach of such warranty rests with the defendants, and that sufficient evidence as to the vessel's state and the state of her machinery has not been given to lead the Court to find that she was in an unseaworthy condition at the time the cargo was shipped. But I think the

true question in this case is, Does not the exception 'accidents from machinery,' include the present case? I must come to the conclusion that the accident in question finds its place among the excepted perils." On this ruling the owners of the cargo were held liable to pay salvage, and it became unnecessary to consider the question of a warranty being employed in the contract.[1]

"Boilers, steam."

As a general rule, independent of any contract, it may be true to say that a carrier who offers to carry goods by sea, undertakes that his vessel is reasonably fit for the purpose for which he offers it, and a right of suit for a breach of such implied obligation would not be affected by the special stipulations in the bill of lading, if proved to be the result of gross negligence. Thus, in an action for not delivering cargo in proper condition, the same having been injured by steam, it appeared that the steam escaped through a crack in the steam-boiler occasioned by the frost, and the Court held that at that season of the year in which such injuries by frost are likely to occur, it is gross negligence in the carrier to fill up his boiler over-night without keeping up a suitable fire to prevent such accidents.[2]

Where there is an absence of negligence or an absence of proof of it, the shipowner will be exonerated. Thus, where bales of cloth were shipped from Calcutta to Rangoon under a bill of lading

[1] The Miranda, 41 L. J. Adm. 82.

[2] Siordet v. Hall, 4 Bing. 607; 6 L. J. C. P. 157.

exempting "accidents by boilers, steam," &c., and on the voyage one of the boilers leaked, and steam and water escaping, some of the bales were damaged. It was held, that the damage was within the exceptions in the bill of lading, and therefore, that the defendants were not liable to make good the loss.[1]

In Cox and others *v.* The Star Navigation Company,[2] where damage was done to a cargo of rice on a voyage from Calcutta to Liverpool, water having found its way into the engine-room by means of a bilge cock having been left unturned, and owing to a door being left open, this water got from the engine-room to the part of the vessel where the rice was stowed and damaged it, the question was, whether this fell within the excepted perils in the bill of lading, viz., boilers, steam, machinery, and their appurtenances. It was held, that being one of the excepted risks, the defendants were not liable.

"Fire."

The exception of "fire" is important in relation to the liability of the common carrier for goods destroyed by that means, though accidentally[3]; and, as it is no protection where there is actual fault or privity on the part of the owner, it coincides in effect with the statutory limitation contained in the Merchant Shipping Act of 1854, 17 and 18 Vict., c. 104, sec. 503, which provides:

[1] Ibrahim Moosum *v.* The British India Steam Navigation Co., Ld., 8 Cal. W. R. C. R. 35.

[2] Mit. Mar. Reg. 2, June 1876

[3] Forward *v.* Pittard, 1 T. R. 27; Trent Navigation Co. *v.* Wood, 4 Doug. 287.

"That no owner of any sea-going ship, or share therein, shall be liable to make good any loss or damage that may happen without his actual fault or privity, of or to any of the following things (that is to say)—

"1. Of or to any goods, merchandize, or other things whatsoever, taken in or put on board any such ship, by reason of any fire happening on board such ship," and the exception will extend beyond this to every owner of a ship, whether sea-going or not, who makes the stipulation. But as the master is not mentioned in the statute, he is excluded from the benefit of the limitation, unless "fire" is specially excepted in his bill of lading.

It was held in a case where goods had been destroyed by fire while on board a lighter not belonging to the owners of the ship, for the purpose of being conveyed from the shore to the ship, that it did not come within the meaning of the Statute 26, Geo. 3, cap. 86, sec. 2, which has been re-enacted by the above statute, and that the owners were responsible for them as at common law.[1]

Where fire did not form one of the exceptions in the bill of lading, it was held that if the goods are not in the ship, but put out of it on shore, and without notice to the consignees, where they are destroyed by fire, the only defence of the owners is at common law,[2] as "fire" is not within the

[1] Morewood *v.* Pollok, 1 El. & Bl. 743; 22 L. J. Q. B. 250.
[2] Bourne *v.* Gatliff, 7 M. & G. 850.

exception "perils of the sea," or "dangers of the river."[1]

Where the goods are landed and warehoused, and it appears that the shipowner still retains the custody and possession of them, not as a warehouseman, but as a common carrier, he will be liable as such for any loss or injury arising from fire, unless he can show that he is exempted by the bill of lading.[2]

The use of the word "other" before "dangers and accidents of the seas" &c., in the bill of lading, does not render "fire" a peril of the sea, or limit it to fire on board the ship. The reasonable mode of construing the contract contained in the bill of lading is, to treat the exceptions as co-extensive with the liability, that is, until delivery to the consignee.

Therefore, the master of a vessel who receives goods on board under a bill of lading, which, *inter alia*, exempts him from liability for loss arising from "fire," and lawfully lands the goods at the port of discharge, is, so long as the goods remain in his custody after being so landed, protected from liability from loss by fire under the above exception in his bill of lading.[3]

"Sweat."

In all vessels, and particularly those constructed of iron, humidity and dampness of the atmosphere

[1] The N. J. Steam Nav. Co. *v.* Merchants' Bank, 6 How. 344; Garrison *v.* Memphis Insurance Co., 19 How. 312; Airey *v.* Merrill, 2 Cur. C. C. 8; Cox *v.* Peterson, 30 Ala. 608; Ang. on Car., s. 166.

[2] Ching Hong & Co. *v.* Seng Moh & Co., I. L. R. 4 Cal. Ser. 736.

[3] The Hongkong & Shanghai Banking Corporation *v.* Baker, 7 Bom. H. C. Rep. 207.

exist to a greater or less extent in the hold, and this may be greatly increased by the transition from a northern to a southern latitude, or from a cold climate to the tropics. The season of the year, the nature of the voyage, and the weather which the ship may encounter, will all to a certain extent increase the dampness and also the influence of it upon goods and cargoes which are liable to damage from this cause. It frequently happens that claims are preferred in foreign ports for damage to goods arising from this cause, and which the master pays rather than submit to the vexatious detention and expense to which his vessel would be put were he to contest them.

This dampness or humidity is known under the term of sweat or sweating of the hold, and this exception is only occasionally to be met with in bills of lading, evidently from the circumstance that damage to goods, when proved to have originated from this cause, comes within the excepted perils or dangers of the sea, and so exonerates the shipowner.

As the masters and owners may be answerable for the goods, although no actual blame is imputable to them, and unless they bring the case within the exception, in considering whether they are chargeable for a particular loss, the question is, not whether the loss happened by reason of the negligence of the persons employed in the conveyance of the goods, but whether it was occasioned by any of those causes, which, either according to the general rules of law,

or the particular stipulations of the parties, afford an excuse for the non-performance of the contract. After the damage to the goods, therefore, has been established, the burden lies upon the master to show that it was occasioned by one of the perils from which he was exempted by the bill of lading, and, even where evidence has been thus given, it is still competent for the shippers to show that it might have been avoided by the exercise of reasonable skill and attention on the part of the persons employed in the conveyance of the goods.

Acting on this principle in cases where the damage is alleged to be due from sweating, the question generally resolves itself into one of bad stowage, or negligence, or mismanagement on the part of the master in respect of the goods, and unless this is proved, the shipowner will be exonerated from losses occasioned by sweating, although not specially exempted: such losses being attributed to a peril of the sea.

A remarkable instance of goods being damaged by sweating whilst the external wrapping and cases were uninjured, occurred in the case of Clark *v.* Barnwell.[1] Here, twenty-four boxes of cotton thread, on delivery at Charleston, were found damaged to the extent of 50 per cent. The spools of thread were packed in small wooden boxes lined with paper, one hundred dozen in each box, and again enclosed in a large wooden box, six small boxes in each large one,

[1] 12 How. 272 s. c. 19 Curt. 131.

lined with paper between the small boxes. When these boxes were delivered and opened, the spools of thread in each of the small boxes were more or less stained and spotted by dampness and mould, though the large and small boxes themselves were generally dry, as was also the paper covering the thread. The vessel on the voyage from Liverpool to Charleston, which occupied sixty-one days, experienced very boisterous weather, and on delivery the cotton thread was found damaged, having stains and spots, the effect apparently of dampness and mould. It was proved, that the cotton thread was in good condition when shipped, and it being clear that the damage had arisen from the effects of the dampness of the atmosphere in the hold of the vessel, the shipowners were discharged from liability.

In another case[1] a mixed cargo, consisting of crates, and boxes of dry goods and hardware, and a quantity of bars of railroad iron, was stowed in the lower hold of the vessel; and some 1,200 sacks of salt were stowed between decks, fore and aft the main hatch. On the voyage from Liverpool to Charleston the ship met with two heavy gales and laboured heavily, the pumps going most of the time during the gales. On opening the upper hatches on arrival to discharge the cargo, the salt between decks was found dry and in good condition, and after its discharge no unusual wet or dampness appeared

[1] Rich *v.* Lambert, 12 How. 347; s. c. 19 Curtis 171.

upon the matting or dunnage upon which it was stowed, nor upon the flooring of the deck, nor was there any evidence of drainage from the sacks of salt in any part of the between decks. Five or six days afterwards, on opening the lower hatches, great heat immediately issued therefrom, and much dampness and vapour were found to pervade this part of the vessel; and the greater portion of the cargo was found to be seriously damaged. The boxes of dry goods were found wet or damp, and stained to a very considerable extent, and the hardware and bars of railroad iron wet and badly rusted; and indeed, the whole cargo throughout the hold more or less damaged. Drops of water, or vapour apparently formed from the heat and dampness of the hold, or by drainage from above, were found pendant from the seams of the under part of the lower deck, affording very satisfactory evidence of the immediate cause of the damage to the cargo; but leaving the question open to controversy as to the source whence these indications proceeded. It was held, that the salt had been properly shipped and stowed in the between decks in accordance with the usage and custom of the trade, and that the loss and injury to the cargo was occasioned by heat and vapour in the hold, against which loss the shipowners were excused, it being a peril of the sea.

Rice cargoes from Burmah, when stowed in the ship's hold, become heated and give off a vapour, which ascends and condenses under the deck and at

the sides of the hold. Damage, therefore, frequently ensues through the vice of the cargo, and though the dunnage is complete and perfect, on discharge it is found that owing to the great natural heat of the rice, an absorption from the water in the limbers and sweat of the hold has taken place, and that some of the bags on the lower tier are damaged. Ventilation and removal of the hatches during the voyage, will to a certain extent remove this danger, and if the vessel is efficient for the conveyance of the rice, and the master has not been guilty of negligence, the shipowner will not be liable for damages arising from these natural causes.[1]

"Heat." The proximate cause of heat cannot be brought within the legal import of the exception of dangers of the seas.

Thus, where bones were stowed in bulk, and also loosely upon several bags of oil-cake, filled up so that no space was left in which any part of the cargo could be put, the circulation of air being thereby prevented. There being no ventilation or any outlet for heat and damp to escape, the bones contributed to taint the atmosphere, and it was proved that under such circumstances the oil-cake might become mouldy; it was held, that from the nature and collocation of this cargo of animal, vegetable, and putrescible matter, the oil-cake was sea-damaged, and that by the packing and cramming of the ship so as to prevent any circulation of air, also by the

[1] Mit. Mar. N., vol. 1, p. 187.

closing of the hatches, the atmosphere in the ship's hold became heated, damp, and vitiated without means of escape, and that this atmosphere was the proximate cause of the damage to the oil-cake, for which the shipowner was responsible.[1]

On an allegation that damage to cargo originated from defective stowage, and heat and fermentation arising from the cargo being stowed in too close conjunction with other cargo: it was held, that the plaintiffs must establish affirmatively that the cargo on its arrival at its port of destination was in a damaged condition; and that the onus then falls on the ship to prove that the original stowage was good, and that the perils of the sea, subsequently occurring, created the damage.[2]

So, where, owing to bad stowage and want of drainage, sugar became heated and much damaged, the shipowners were held liable.[3]

But where the entire cargo is shipped by one firm or individual, as where the charterer furnishes the whole lading himself, if the master is unaware of the probable injurious results to the cargo from heat occasioned by the collocation of different cargoes, he is not called upon to incur expense in fitting up the vessel in such a manner that the several articles may be stowed separately, and even supposing the shipowners are aware of the usual consequences of stowing certain cargoes together in the same hold, unless

[1] The Freedom, Law R. 3 P. C. 594. [2] The Alexandra, 14 L. T. 742.
[3] The Nepoter, 38 L. J. Adm. 63.

they receive notice from the shippers not to do so, they may well come to the conclusion that the shippers were also aware of them, and they would not have put such a cargo on board unless they had been assured that the cases or packages were of such extraordinary strength and goodness as to be capable of resisting the usual influence of a heated temperature. Thus, where the charterers of a vessel shipped a cargo of oil, rags, and wool, which was stowed in the same hold of the vessel, and owing to the influence of the heat generated by the wool and rags, the casks leaked to an unusual extent, and a large quantity of oil was lost, the Privy Council held, that ignorance on the part of the shipowners of the latent mischief arising from the action and contiguity of a cargo of this nature, could not be said to amount to misconduct or negligence; and further, that even if the shipowners knew, or ought to have known, what the consequences of such stowage must be, it did not follow they were guilty of negligence in not putting up bulkheads. Assuming that they could have been so constructed as to protect the part of the hold where the oil was stowed from the influence of the heat generated by the wool and rags, still that could not have been done without trouble and considerable expense, which the shippers had no right to throw on the shipowners because they chose to load the ship they had chartered, with a cargo of such a nature.[1]

[1] Ohrloff *v.* Briscall, Law R. 1 P. C. 231; 35 L. J. P. C. 63

It has been established in superior courts of law that a shipowner is not liable for the heating of grain, nor for damage arising from decay or depreciation from natural causes.[1] So, where a cargo of wheat on its arrival at Dublin on a voyage from Caen, was found to be badly heated in the centre about four feet all over (the surface being in good condition), also about two feet all over the bottom, and not less than 18 inches round the sides being sound. After delivery the merchant issued an Admiralty writ on the ship for £500 for damage to cargo through being heated, not alleging anything against the ship, but against the inexpertness of the master in not detecting the condition of the cargo when shipped. The clause "dangers and accidents of the seas" was inadvertently omitted from the bill of lading, but at the hearing the court dismissed the petition.[2]

Tar expands by heat in the hold, and thereby causes leakage, especially if the barrels have been filled in a cold climate, and the ship proceeds where the temperature is much higher than at the place of shipment.

An action was brought against the owners of a steam-boat on account of loss on a cargo consisting of over two hundred barrels of molasses, which the bill of lading stated to have been received in good order and well conditioned, and to be delivered at

[1] The Anna Maria, Adm. Ct., 31st July 1871.

[2] The Affines, Mit. Mar. N., vol 1, p. 135.

Pittsburg. The cargo was brought to Louisville, and the state of the water in the river not permitting the boat to proceed to Pittsburg, the molasses was put into a warehouse, and afterwards (with a little delay) re-shipped, and arrived, in the usual time, at Pittsburg. On delivery there, it was discovered that two of the barrels were missing, seven of them empty or nearly so, and some others only half full. Information was elicited from many witnesses as to the trade on the Western waters, and on the nature of the article of molasses, and the trade in it; for instance, that in warm weather, from fermentation, a barrel will be full, and even running out at the bung-hole, on its being moved and carried to a dray, although when still and in a cool place, the cask will not be full by one-fourth, or one-third; that on account of the fermentation and expansion of the molasses, it was necessary to have small vent holes on the top of the cask to prevent its bursting; and that through these vent holes from three to five gallons will be lost between New Orleans and Pittsburg, if the voyage be in warm weather, as was the voyage in question. It appeared also, that the article in warm weather loses more or less by leakage, according to the goodness of the casks. It was conceded that the lost barrels must be paid for; but the question was, whether the deficiency in the others was the consequence of defect in the casks, or of bad stowage, or other causes for which carriers were answerable. The following charge to the jury was held to be

correct: "No care or attention of the carrier could prevent the fermentation and expansion of the molasses in warm weather, by which a considerable quantity of molasses would be lost; this loss, therefore, arising from a law of nature, was necessary, and came within the exception of 'the act of God.' The defendants ought not to be answerable for loss occasioned by the peculiar nature of the article, carried at that season of the year, nor leakage arising from secret defects of the casks, which could not have been observed or remedied after the casks were stowed away; but for all other losses, not thus occasioned, or shown by the defendant to have originated from causes beyond their control, they are answerable." And the Court held, that unless the defendant could prove that a fraud and imposition was practised upon him, he could not contradict the bill of lading signed by him; and that if the barrels of molasses were injured in their delivery to the carrier, and he saw and knew it, this would not be such a latent defect as would excuse him from liability for loss, beyond that which was occasioned by the peculiar nature of the article carried.[1]

"Goods carried on deck are solely at the merchant's risk."

The duty to stow under deck is deemed a condition of every bill of lading, whether expressed or not; unless the liability is expressly excluded by the terms of the contract, it will always be deemed one of its provisions. This is a general rule of maritime

[1] Ang. on Car., sec. 211.

law arising out of the general usage of the commercial world.[1]

Whether a ship's poop, or a house built on deck, is to be considered as a proper place for cargo, so as to entitle goods carried there to the privileges of under deck cargo in the matter of jettison, is a question which has given rise to much doubt. The practice is to treat the poop as under-deck; and to follow the same rule with such houses as are permanently built into the ship, either by forming part of its frame, or by being let down into the beams and solidly secured with iron knees, or in some equally substantial fashion. Cargo in mere temporary erections, not so secured, is treated as if on deck.[2]

Where casks of oil were stowed on the main deck of a steamer bulwarked entirely round and under cover of the upper deck, well stowed, except that they were not stanchioned down from the top, and no bulkheads were built behind them, the voyage of the steamer from Boston to New York being short, occupying but one night; though part of the way out at sea, and the goods were injured by a violent storm. The Court held, that these goods were stowed in compliance with the rule requiring them to be stowed under deck. That steam vessels making such short voyages, on which the speedy transit of goods is an object of moment to shippers as well as to shipowners, are not bound to exercise the same elaborate and dilatory precautions against the vicis-

[1] The Neptune, 16 L. T. Adm. 36. [2] Lowndes on G. A. 38.

situdes of the sea as on longer and more perilous voyages. That the loss arose from a danger of the sea against which the owners were not bound to provide further than they did.[1]

"Jettison."

Jettison is defined to be a heaving overboard of the goods in order to save the ship.[2] Mr. Lowndes says "jettison is the throwing overboard of cargo or ship's materials to lighten the vessel"[3]; and in volume III. of Kent's Commentaries, page 326, we find it laid down thus: "By the Rhodian law, as cited in the Pandects, if goods were thrown overboard in a case of extreme peril to lighten and save the ship, the loss, being incurred for the common benefit, was to be made good by the contribution of all. The goods must not be swept away by the violence of the waves, for then the loss falls entirely upon the merchant or his insurer, but they must be intentionally sacrificed by the mind and agency of man, for the safety of the ship and the residue of the cargo. The jettison must be made for sufficient cause, and not from groundless timidity. It must be made in a case of extremity, when the ship is in danger of perishing by the fury of a storm, or is labouring upon rocks or shallows, or is closely pursued by pirates or enemies."

If the vessel is seaworthy to carry a cargo under deck, and there is no general custom to carry such

[1] The Neptune, 16 L. T. Adm. 36.

[2] Crump's Prin. of the Law of Marine Ins. and Gen. Av. 138.

[3] Lowndes on G. A. 31.

goods on deck in such a voyage, and the loss is to be attributed solely to the fact that the goods were on deck, and their owner had consented to their being there, he has no recourse against the master, owners, or vessel, for a jettison rendered necessary for the common safety by a storm, though that storm, in all probability, would have produced no injurious effect on the vessel if not thus laden. It is not for him to say that in the first storm the vessel encountered, though not of unusual severity, she proved to be unable to carry the deck load, and so was not of sufficient capacity to perform the contract into which the carrier entered. The carrier does not contract that a deck load shall not embarrass the navigation of the vessel in a storm, or that it shall not cause her so to roll and labour in a heavy sea, as to strain and endanger the vessel. In short, he does not warrant the sufficiency of his vessel, if otherwise staunch and seaworthy, to withstand any extraordinary action of the sea when thus laden. If the vessel is in itself staunch and seaworthy, and her inability to resist a storm arises solely from the position of a part of the cargo on deck, the owner of the cargo, who has consented to this mode of shipment, cannot recover from the ship or its owners, on the ground of negligence, or breach of an implied contract respecting seaworthiness.[1]

Thus, where two boilers with chimneys and other

[1] Alexander Lawrence and others *v.* Charles Minturn, 17 How. 100; s. c. 21 Cur. 392.

iron materials, weighing nearly 40 tons, were, with the shipper's consent, stowed on the deck of the clipper ship "Hornet" for a voyage from New York to San Francisco, and owing to the presence of this material on the deck the vessel became so much strained and injured in a gale that it became necessary to jettison them after the gale was over, to protect the vessel from risk of any future gale she might encounter. It was held, that as the shipper had consented to the cargo being placed in that position, he took the risk of its rendering the ship unmanageable in a storm, and that he, and not the shipowners, must bear the loss occasioned by its being placed on the deck.[1]

It is now settled law that a custom to carry a deck load must be modified by a custom not to pay for it, if jettisoned, as general average; although, if the shipper had assented or made himself a party to that mode of stowage, he personally would be liable to pay his share.[2]

Mr. Lowndes says, "when the shipper of cargo has consented to have his goods laden on the deck, it has been of course at a reduced rate of freight; in return for which he was content to run the risk of having his goods jettisoned without compensation. That he did in fact run this risk followed necessarily from the old rule, which up to 1837 was universal.

[1] Alexander Lawrence and others *v.* Charles Minturn, 17 How. 100.

[2] Gould *v.* Oliver, 2 M. & G. 208; Miller *v.* Titherington, 30 L. J. Ex. 217; 3 L. T. 893; Johnson *v.* Chapman, 35 L. J. C. P. 23.

Deck-load jettison was in no case general average; if the shipper assented, by express words in his charter-party or bill of lading, to such stowage, he could not sue the shipowner on the grounds of its being improper; the whole loss by jettison consequently fell upon himself. With the exception of timber this rule still subsists in other trades in the form of a custom."[1]

The principle of adjustments in the case of deck cargoes is, that as between assenting parties to such stowage, the deck must be taken to be a proper place for carrying cargo, and what is thrown from thence is to be treated as if it had been below the deck. But as regards all parties who have not assented, the old rule remains in force, and for them there is no general average for deck-load jettison; and where the exception of jettison is contained in the bill of lading, the loss will fall on the shipper himself. If a ship is chartered for a full cargo, including a deck load, and is then sublet by the charterer to various shippers, the shipper of goods below the deck, on a bill of lading making no other reference to the charter than "freight payable as per charter-party," will not be liable to a claim for contribution to a deck-load jettison, as he is no party to the shipment on deck.[2]

If the danger which necessitated the jettison has resulted from the *vice propre* of the article jettisoned,

[1] Lowndes on G. A. 36; The Milwaukee Belle, 21 L. T. 800.

[2] Chappel *v.* Comfort, 31 L. J. C. P. 58.

as, for example, when there is danger of fire from the heating of hemp or cotton shipped in a damp state, or from the spontaneous combustion of coals, it is the practice not to admit this loss into general average, the loss being entirely that of the shipper.[1] This rule, however, ought not to be extended to cases in which the tendency to combustion has been the result of an accident of navigation, as when coals heat and ignite in consequence of the absorption of sea-water from a leak.[2]

If there is an usage to carry carboys of vitriol on deck, or to embed them in sand in the hold, the underwriters are bound to take notice of it without any communication. All they can require is that the carboys should be properly stowed in the usual manner. They will be liable if it becomes necessary to jettison them by reason of their taking fire, but not if the vitriol was carried on deck without such an usage, or if they were not stowed there in a skilful and proper manner.[3]

In order to exempt the owners from liability for damage to goods stowed on deck, it is not sufficient for the master to urge that he was authorized so to stow the goods by the bill of lading: he is bound to establish by proof that the goods were properly stowed on deck, and that the risk of navigation, in spite of proper stowage, caused the loss or deterioration of the merchandise.

[1] Johnson *v.* Chapman, 35 L. J. C. P. 23. [2] Lowndes on G. A. 41.
[3] DaCosta *v.* Edmunds, 4 Camp. 142.

Where the goods jettisoned have been insured, the owner of the same need not, before resorting to his remedy under the policy, recover his contribution from the shipowner and owners of the cargo saved, but may at once proceed to recover on the policy and subrogate the insurer into his rights. Thus, where goods are insured, and jettison is one of the risks insured against, the underwriters, in case of a loss by jettison, are liable for the full insured value of the goods, and not merely for the proportion which the owner of the jettisoned goods would have to contribute as his share in the general average statement; and the underwriter, after paying the full amount, is entitled to use the name of the assured to recover contribution from the owners of the ship and cargo saved. In an action on a policy in which jettison was one of the risks specifically insured against, to recover the value of goods jettisoned, the underwriters set up a custom of London, that where goods are lost by jettison under such circumstances as to constitute a general average loss, the underwriters were liable only in respect of such proportion of the loss as was cast upon the owner of the goods in the general average statement. It was held, that if the practice existed for the owner of the jettisoned goods first to recover contribution from the owners of the ship and cargo saved, it was only a practice for the convenience of the parties, and not a binding custom.[1]

[1] Dickinson *v.* Jardine, 3 Asp. Mar. Law Ca. 126.

"Rats." "Vermin."

The shipowner, being *prima facie* in the nature of a common carrier, is responsible for all injuries to the cargo, unless specially exempted by the contract under which it is carried; he will therefore be liable for all loss which may be occasioned to the goods by rats or vermin, unless the bill of lading limits his liability in this respect, as it has been held that such losses are not covered by any one of the ordinary risks or exceptions, such as dangers or perils of the sea, this being a kind of destruction not peculiar to navigation, but to which commodities are liable on land or in warehouses; the presence of cats on board and other precautions to prevent injury from rats being insufficient to protect the shipowner.

This view, however, is contrary to the opinions which have been expressed by foreign jurists.[1]

Where the barque "Carlotta" sailed under charter from New York to Barcelona with a cargo of petroleum, from whence she was to return with fruit; on arrival and discharge at Barcelona she was fumigated for the purpose of removing the scent of petroleum, and also of killing any rats; she then took on board a cargo of almonds and other fruits, and proceeded on her return voyage. After being at sea some days rats were noticed on board, and on discharge of the cargo at New York, some of the bags of almonds were found to have been gnawed by rats. The vessel had on board on the voyage a cat,

[1] Laveroni *v.* Drury, 22 L. J. Ex. 2; Kay *v.* Wheeler, Law R. 2 C. P. 302; Hunter *v.* Potts, 4 Camp. 203; Rohl *v.* Parr, 1 Esp. 445.

and also a rat terrier. The bills of lading making the almonds deliverable to G. and A., contained no exception of damage by rats. G. and A. sold the almonds before arrival for a sound price, which had been paid them in full, and had applied to and received from Government a rebate of duties on the almonds, by reason of their damaged condition. In an action against G. and A. to recover the charter money, the damage by rats was set up as one of the defences, and it was held, that though the charter-party contained no provision for the giving of bills of lading, these latter must be taken to be the contract between the parties so far as the damage by rats was concerned. That such damage was not a peril of the sea, and it did not appear that the damage by rats was a thing against which it was impossible to guard. And that G. and A. were entitled to recover for the damage to the almonds, notwithstanding their sale of them before arrival, but that they must give credit for any rebate of duties they had received by reason of such damage.[1]

In the case of the "Miletus,"[2] which was referred to in the above case, it was held by Justice Nelson "that damages occasioned by vermin on board of a ship, to a cargo in the course of a voyage, are not the result of a peril of the sea, or of any of the dangers or accidents of navigation, within an exception to that effect in a bill of lading, but are

[1] The Barque Carlotta, Bliss *v.* Gomez, 3 Asp. Mar. Law Ca. N. S. 456. [2] 5 Blatchf. C. C. R. 335.

damages for which the ship and its owners are liable, as insurers of the safe conveyance of the cargo." In this case the labels pasted on the outside of the mats which enclosed chests of tea, had been eaten by cockroaches, and thus embarrassed the assortment and delivery of the boxes and depreciated the market value of the same.

"Coal-dust."

There is no rule which lays down that coal may be used as dunnage. Therefore, though it may be by no means an uncommon practice in certain trades to stow beer amongst coals, still, if the master does so in such a way as to injure or damage cargo, he will be liable. Lord Tenterden having laid it down, that it is the general duty of the captain to stow and arrange the different items of his cargo so as they shall not be damaged, either by the motion or leakage of the ship, or by bad weather.[1]

Thus, where fifty-one hogsheads of beer, out of a consignment of three hundred, were damaged by the porous vent pegs being caked over by coal dust, the hogsheads having been stowed amongst and covered over by coals, whereby the escape of the carbonic acid gas was rendered impossible, and the beer in consequence was damaged; the Court held that though this mode of stowage was not uncommon, still it did not follow that if any damage resulted from that mode of stowage, the master would not be liable; and it appearing that the damage was the result of this method of stowage, the master was held liable.[2]

[1] Abbott on Sh., 259. [2] Allsopp v. Thomas, Com. Ca. 396.

In many trades in which coal is carried along with other goods, it is common for the shipowners to provide against this responsibility by the insertion in the bill of lading of a special clause exempting them from any liability arising from coal dust.

"Not accountable for short delivery."

The clause occasionally met with in bills of lading, such as "not accountable for short delivery," is taken to apply to cargo in bulk, or the difference between the intake and the output. As regards packages, bales, bundles, and all cargo shipped by number as distinguished from quantity, weight, or measure, the condition would not defeat the claims of the bill of lading holders for non-delivery of goods entrusted to the ship for conveyance. Bills of lading are presented for signature usually after the goods have been shipped; and if these documents are accepted by the shipper without protest, he will be bound by the stipulations contained therein, subject to special circumstances. These contracts of affreightment, like agreements, are governed by common law, and if the shipper has reason to believe that goods have been abstracted from a package, he should receive the same under protest. The remedy for any deficiency being by action against the master or owners of the ship, the master cannot be compelled to keep a package and pay for its value. As a package may be delivered in the same state in which it was received, it would therefore be necessary for the shipper to prove that it was delivered in a different condition from that in which it was shipped.

Letters of marque are commissions for reparation to merchants for extraordinary reprisals taken and despoiled by strangers at sea, grantable by the Secretaries of State with the approbation of the Sovereign and Council and usually in time of war. The words *marque* and *reprisal* are used as synonymous terms, although the latter is strictly, taking in return; the former, passing the frontiers in order to such taking. "Letters of Marque."

These letters may be granted by the law of nations, even during peace, wherever the subjects of one state are oppressed and injured by those of another, and justice is denied by that state to which the oppressor belongs, and Government chooses thus to compel indemnification, without necessarily incurring the evils of general warfare.

The term itself is now, however, somewhat differently applied. If, during war, a subject should take an enemy's ship, without commission from the Crown, the prize would, by the effect of the prerogative, become a droit of Admiralty, and would belong, not to the captor, but to the Crown. Therefore, to encourage merchants and others to fit out privateers or armed ships in time of war, the lords of the Admiralty were empowered by various Acts of Parliament, and sometimes by proclamation of the Sovereign in Council, to grant commissions to the owners of such ships, and the prizes captured by them were directed to be divided between the owners and the captors and crews. But

the owners, before the commission was granted, had to give security to the Admiralty to make compensation for any violation of treaties between those powers with whom the nation was at peace, and that such armed ship should not be employed in smuggling. These commissions are ordinarily denominated letters of marque, in which sense alone the term is now accepted. On the 16th of April 1856, the plenipotentiaries of Great Britain, Austria, France, Prussia, Russia, Sardinia, and Turkey assembled in Congress at Paris, and signed a declaration, of which the first article was "Privateering is and remains abolished." The United States of America were invited to accede to this declaration, but declined.

If a merchant ship, carrying letters of marque, meets with an enemy whilst in the prosecution of the voyage, she may engage in her own defence, and prosecute the engagement to capture, even though, in so doing, she may be obliged to depart from the direct course of the voyage[1]; also, if an enemy comes across her course, she may attack and take him from other motives than those of self-defence, if the so doing does not involve any departure from the direct course of the voyage.[2]

The true principle appears to be, that no departure from the usual course of the voyage, caused by repelling a hostile force, or even attacking an enemy's ship, will be held, under such circumstances, to

[1] Arnould on M. I., vol. 1, 446.

[2] Parr *v.* Anderson, 6 East. Rep. 202.

amount to deviation, provided what is done can fairly be attributed to motives of self-defence. And as the master would be warranted in so doing under his letter of marque, the shipowner will not be liable for the loss of the goods, in the event of the vessel being lost, or captured, in consequence of his having thus been engaged with the enemy; but, if the vessel's departure from her regular course is plainly attributable to the desire of profit, and done with a view to capture prizes for the sake of gain, then the acts of the master being in excess of the authority conferred upon him under the letter of marque, the clause in the bill of lading would not exonerate the shipowner from loss to the cargo resulting from such acts. Thus, if a merchant ship cruises, *i.e.*, lies by, or departs from the direct course of the voyage, in hopes of meeting with prizes, this act would be unjustifiable, and the shipowner will be responsible for all loss arising therefrom.

"Collision."

The four possibilities under which the accident of a collision could arise have been clearly stated by Lord Stowell, thus, "In the first place it may happen without any blame being imputable to either party, as where the loss is occasioned by a storm, or any other *vis major;* and in that case, the misfortune must be borne by the party on whom it happens to light, the other party not being responsible to him in any degree. Secondly, a misfortune of this kind may arise where both parties are to blame; where there has been a want of due diligence or skill on

both sides. In such a case, the rule of law is, that the loss must be apportioned among them, as having been occasioned by the fault of both. Thirdly, it may happen by the misconduct of the suffering party only; and then the rule is, that the sufferer must bear his own burden. Lastly, it may have been the fault of the ship which run the other down; and, in this case, the injured party would be entitled to an entire compensation from the other."[1]

The mere happening of a collision, without more, is no evidence of negligence on the part of the ship sued, and in order to fix such ship with the loss, it is necessary for the party suing to give evidence of the absence of reasonable care and maritime skill, on the part of the crew of the ship sued.[2]

Where a reasonable doubt exists as to the cause of the collision, the court will regard it as the result of accident. And if cross actions are brought to recover damage which was occasioned by inevitable accident, both actions will be dismissed.[3]

The common carrier by water is, and always has been, exempt by the common law from losses occasioned by the natural accidents peculiar to the sea; therefore, the shipowner will not be responsible for any loss, either to the ship, or cargo, arising from collision where no blame is imputable to his vessel, it being held that such losses come within the

[1] The Woodrop, 2 Dods. Ad. Rep. 83.

[2] The Mary Stewart, 2 W. Rob. 244; Hammack *v.* White, 31 L. J. C. P. 129; Scott *v.* The London Dock Co., 34 L. J. Ex. 220.

[3] The Shannon, 1 W. Rob. 463; The Ebenezer, 2 W. Rob. 206.

exempted clause in the bill of lading, "dangers or perils of the sea."[1]

But a collision arising from the negligence of the crew of the ship in which the goods are carried, is not "a peril of the sea," within the meaning of an exception of "loss arising from perils of the sea," in a bill of lading. The shipowner will therefore, in such case, be liable to the shipper for loss or damage to his goods resulting from such collision.[2]

Where an action was brought by the owner of a quantity of rice shipped on board the "None-Such," which was lost, upon a bill of lading in the usual form, "excepting the dangers of the sea," it was held, that the collision was the result of negligence in the management of one or both the vessels, and the owners of the "None-Such" were in either case liable to the shipper. Further, that a collision which would excuse the carrier must be such as could not be avoided by human prudence and skill.[3] If the carrier vessel is sunk by a collision, and the goods are lost through the fault of those on board, it is no defence to an action by the owner of the goods that the colliding vessel was also in fault.[4]

By Section 298 of the Merchant Shipping Act, 1854, the owner of a ship guilty of a breach of the Admiralty regulations is disentitled from recovering

[1] Smith *v.* Scott, 4 Taunt. 125; The Kathleen, 43 L. J. Adm. 39.

[2] Grill *v.* The General Iron Screw Collier Co., Law R. 1 C. P. 600; 37 L. J. C. P. 205.

[3] Ang. on Car., s. 166, *n.*1.

[4] Ang. on Car., s. 166, *n.a.*

in the Court of Admiralty any recompense whatever for any damage sustained by such ship in such collision, unless it is shown to the satisfaction of the court, that the circumstances of the case made a departure from the rule necessary. And it is now settled that the owner of cargo lost by a collision, is not *in eadem conditione* with the owner of the vessel as to their right to recover, for though both ships are to blame, the owner of the cargo, not having any control over the blameworthy master and mariners of the vessel upon which his goods are carried, is not to be considered as having any share in the *delictum*, so as to be thereby disentitled to recover either under the old law of the Admiralty, or under Section 298 of the Merchant Shipping Act, 1854. The owner of the cargo ought not to suffer for the breach of the rule; he is innocent, and the master, who is the guilty party, is not his servant.[1]

The owner of the ship himself appoints the master, and he desires the master to appoint and select the crew; the crew thus become appointed by the owner, and are his servants for the management and government of the ship, and if any damage happens through their default, it is the same as if it happened through the immediate default of the owner himself.[2] The owner of the cargo, in case of loss or injury to his goods by collision, has his remedy by action, where

[1] The Milan, S. S. 31 L. J. Adm. 105.

[2] Laugher *v.* Pointer, 5 B. & C. 554; Quarman *v.* Burnett, 9 L. J. Ex. 303; s. c. 6 M. & W. 499.

both vessels are in fault, against either one or both; but he cannot recover, if he proceeds against one only of two delinquent ships, more than a moiety of the damage, because it is impossible in practice to affix to the vessel proceeded against more than a moiety of the blame, and the owner is therefore left, with respect to the other half of his loss, to his remedy against the other vessel which is equally delinquent. It may not be consonant with justice that the owner of a cargo, who is not the owner of the ship, should recover only a moiety from one of two ships both in fault. Perfect justice, if it could be administered, would afford a remedy in proportion to the culpability of each. This, in cases of collision where both are to blame, is generally impossible, and therefore, as a kind of *judicium rusticum*, the party sued is liable to one-half the damage only, and the innocent owner of the cargo is left, as to the other half, to sue the owner of the ship on board which his goods were carried.[1]

The cargo on board the ship doing the damage cannot be attached to make good that damage. There is no instance in which the Court of Admiralty has arrested a cargo for the purpose of making good the damage done by the ship in which it was conveyed, and the reasons against such a course of proceeding are most powerful. The damage is said to be done by the ship, but this is a mere form of

[1] The Milan, 31 L. J. Adm. 111.

expression, the truth and reality being that it is done by the master or the crew, as servants of the owner of the ship, and upon no principle whatever are the owners of the cargo responsible for the acts of the master or crew.

The attachment of goods in cases where the owner of the ship doing the damage is also owner of the cargo laden on board, is likewise without precedent, and will not be sanctioned by the Court of Admiralty.[1]

Where cargo is lost in a collision, and the owners bring a suit to recover its value, the damages must be computed by taking the price paid at the port of shipment, and adding the expense of lading it on board, and of navigating the vessel to the place of collision; with interest on such account from the date of collision.[2]

Part IX. of the Merchant Shipping Act, 1854,[3] which limits the liability of the shipowner for damages to an extent beyond the value of his ship, and the freight due, or to grow due, in respect of such ship during the voyage, does not apply to foreign ships; therefore, where a foreign ship is to blame in a case of collision, her owners are responsible to the full extent of the damage done, though exceeding the value of the ship and freight.[4]

[1] The Victor, 29 L. J. Adm. 110.

[2] The Ocean Queen, 2 Asp. Mar. Law Ca. 419.

[3] 17 & 18 Vict., c. 104.

[4] Cope v. Doherty, 27 L. J. Ch. 600; The Victor, 29 L. J. Adm. 110.

Transhipment. Reshipment.

Provision for the transhipment and reshipment of goods is frequently made by the insertion in the bill of lading of a clause to the following effect:—

"The company are to be at liberty to carry the said goods to their port of destination by the above or other steamer or steamers, ship or ships, either belonging to the company or to other persons, proceeding either directly or indirectly to such port, and in so doing to carry the goods beyond their port of destination, and to tranship or land and store the goods either on shore or afloat, and reship and forward the same at the company's expense, but at merchant's risk." This privilege of transhipment in a bill of lading reserved to the carrier does not discharge him from any responsibility which is incident to his contract, until the goods be delivered at their destined port. A stipulation, for instance, in a bill of lading, that the shipper, in case of low water in the river, may reship in other craft, does not vary his obligation to deliver safely. Such stipulation is for the benefit of the carrier, in securing to him the advantage of as great a portion of the freight as he could earn, and to throw upon the owner of the goods any increase of expense; and the relation and responsibility of a common carrier continue from the shipment of the goods until their arrival at the destined port of delivery. Where the undertaking was to deliver a cargo, with the privilege of reshipment at a particular place on the way, and the undertaker stopped short of the point designated,

and the cargo was lost in a storm, it was held he was responsible. As the storm was a peril of the river, and an act of God, the carrier would have been excused if he had encountered it in the ordinary course of the voyage, and of his duty; but, as it was encountered when out of the course of his voyage and of his duty, and might have been avoided but for a disregard of his duty and of his contract, the carrier made himself liable. By the insertion, therefore, in the contract, of these words, "the privilege of reshipping," although the carrier is allowed to tranship or reship in another vessel, his contract is not performed until the delivery of the goods at the place of their destination. And where goods are shipped with the privilege of transhipment, and are damaged on the voyage, and are transhipped under a bill of lading which contains a provision that the second carrier shall not be responsible for the damage done by the first, the second carrier is not liable for such damage, although the owner of the goods has not received the second bill of lading.[1]

As a rule, the shipowner, the agent, or some one on his behalf, usually advises the consignees of transhipped cargo of the arrival of the vessel, and instructs the bill of lading holders to apply for their goods. This practice of giving notice is adopted by many steamship companies, and should be followed in all cases. If the goods are transhipped and

[1] Ang. on Car., s. 227 and note.

become lost, damaged, or confiscated in consequence of the consignee not being informed of the change of the vessel, whereby no demand could be made for their delivery, the shipper can proceed against the shipowner for transhipping the goods, and not giving notice of the name of the second vessel.

Where the goods are transhipped, and upon arrival at their port of destination are stored in the Custom-house, owing to their not being claimed by the consignee, to whom no notice of the change of the ship has been given, the shipowner, having failed to give notice of such transfer, will be liable for the extra expenses incurred.

Owing to the increased risks which goods are subjected to whilst in transit through Egypt, some steam companies have deemed it necessary to protect themselves from liability, by the following clause in the bill of lading :—

"In the event of transit to and from Suez and Alexandria, the goods will be landed, forwarded, conveyed, and reshipped at the owner's expense, but at merchant's risk; and in no case will the owners be responsible for accidents, loss, damage, delay, or detention, however caused, in the course of such landing, transit, or reshipment." But, in all cases, it is the duty of the master to use due care and diligence in forwarding the goods, and it will be no excuse that he delayed the transhipment in order to avoid paying a high rate of freight for forwarding on the

goods, or otherwise to avoid incurring expense. Thus, in an action on a bill of lading by which the shipowner was bound to forward the goods by steamer from London to a foreign port at his own expense, the breach of duty being in not using due diligence to do so, whereby the season was lost; it was held, that it was not enough that he had let the discharge and sorting of the cargo take the usual course of business at the docks where the vessel discharged, if he neglected means which might well have been used to hasten the sorting, and to procure vessels for the transhipment.[1]

If the vessel, having performed part of her voyage, be disabled from completing the remainder, then transhipment to the place of destination is in furtherance of the original purpose; and it is settled that in cases of such transhipment, if the goods be conveyed safely to the place of destination, the freight shall be that originally contracted for.[2]

"Risk of boats so far as ships are liable thereto."

In cases where the shipowners have to convey goods to, or from, the shore by boats, they endeavour, by the insertion of this clause, to protect themselves against losses from causes beyond their control. For instance, if goods are deposited in a warehouse on account of the ship, and such goods have to be taken off in a surf-boat, which may capsize or take in water over all, the shipowner thus protects himself

[1] Carali v. Xenos, 2 F. & F. 740.

[2] Shipton v. Thornton, 9 Ad. & E. 314.

from perils, the guarding against which is not within his control.

A boat or barge may also be run down or meet with disaster, and from all such dangers and accidents the shipowner would be exempt under this clause, but not from damage or loss arising from his own neglect.

Where the exception in the bill of lading was "the act of God, &c., and all and every other dangers and accidents of the seas, rivers, and navigation, of whatever nature and kind soever, save risk of boats so far as ships are liable thereto, excepted," and the goods were sent towards the shore in one of the ship's boats and lost, owing to the boat being driven on shore by the violence of the wind and sea, it was held within the exemption, and that the shipowner was not liable. Whatever be the meaning of the words in the above clause in this connection, it has been held, that the words "save risk of boats," &c., were unnecessary, and that with or without them, the shipowner, in such a trade as the West Indian, incurs no greater or other liability with regard to the goods in the boats than exists in respect of those in the ships.[1]

Where the consignee had not boats ready alongside to take delivery of his goods upon the vessel dropping anchor, and the bill of lading provided that "the goods on arrival at their port of destination were to be

[1] Johnston *v.* Benson, 4 B. Moore 90, cited in McLach. on Sh. 502; Kay on Sh., vol. 1, pp. 363, 411.

delivered into the receiving ship, or to be landed at the consignee's expense, the shipowner's liability ceasing as soon as they were delivered from the ship's tackle," and upon arrival of the ship at the port the goods were put into other boats, one of which, through the negligence of the boatmen, was swamped and the contents damaged. The shipowner was held not to be liable, unless it was shown that he had failed to take reasonable and proper care in the selection of the boats.[1]

"Rust."

The clause in a bill of lading by which the shipowner is "not accountable for rust," is limited to the rust of the goods themselves, and does not protect the shipowner from liability for damage done to other goods in consequence of such rust. Grove, J., in delivering judgment in the case of Thrift *v.* Youle and Co.,[2] said, the meaning of the word "rust" in the bill of lading was that if the goods rust, the shipowner will not be responsible. The very use of the word "rust" shows that the exclusion of the protection to consequential damage was not intended, for it is difficult to see what damage there would be from rust, except rust of the things themselves which were shipped under the bill of lading, and all that the shipowner means by this exception is, that he will not undertake that the goods may not rust from their knocking about in the vessel.

But in order to exempt the shipowner from liability

[1] Bullock Bros. & Co. *v.* Toay Aung, 24 Cal. W. R. C. R. 74.

[2] 46 L. J. C. P. 402.

under this clause, the rust must be such as is usual and customary, and must not be occasioned by the improper stowage of the cargo in placing other goods in such close proximity to the goods likely to rust, as to occasion damage to them by inducing an unusual amount of rust, and more than might be ordinarily expected. Thus, where iron bars were shipped at London for Calcutta, and copperas was stowed in such close proximity to them, that on arrival, it appeared that the bars were covered with a flaky foreign substance, which subsequent analysis proved to be not ordinary rust from atmospheric causes, but sulphate of iron or copperas. It was held, that the damage was not occasioned by rust within the meaning of the exception in the bill of lading, but by the negligent stowage of the copperas in such close proximity with the iron, which induced the unusual rust complained of.[1]

In the case of the ship "Martha,"[2] a quantity of sheet iron was found on delivery to be stained and rusted with wet. It was proved that the iron was well stowed, that the ship came in tight and dry, that the iron was taken on board in dry weather, and not exposed to the access of water. But the court held that this was not enough, for the burden was on the ship to show that the damage existed when the cargo was laden on board.

"Leakage and breakage."

The exception of "leakage and breakage," like that

[1] MacKinnon & others *v.* Taylor, Com. Ca. 514.

[2] Olcott, Adm. 140; Parsons on Sh., vol. 1, p. 189.

of rust, will not exonerate the shipowner from damage or loss resulting therefrom; it is only the leakage or breakage of the articles themselves against which this clause protects the shipowner; it does not provide for losses consequent upon such leakage or breakage. Therefore, where bales of palm baskets were damaged by oil leaking from casks, the court held, that as the term leakage only applied to the leakage of the article itself, the shipowner was responsible for the loss occasioned to the baskets by the oil; and it was stated that similarly in the case of breakage the term applied to the loss of the thing broken, and not to the damage done by some other things.[1]

Thus, where one bale of piece-goods was damaged by oil having come in contact with it, and several other bales were damaged by chafing during the course of the voyage, it was urged at the trial that the damage arising from the oil came within the term leakage. But the court held, that the term leakage in the bill of lading was applicable only to the goods comprised in that bill, and did not extend to damage caused to such goods by leakage from other parts of the cargo. It was also ruled that damage from chafing by rubbing, *i.e.* by the bales rubbing against other portions of the cargo near them, did not come within the exception breakage.

The limitation of liability by the memorandum in

[1] Thrift *v.* Youle & Co., 46 L. J. C. P. 402; The Nepoter, 38 L. J. Adm. 63.

[2] Graham & others *v.* Hille, 10 Bom. H. C. Rep. 60.

the bill of lading, that the shipowners are not to be accountable for leakage, is not restricted as to the quantity of leakage, and protects the shipowners in the absence of proof that the leakage was occasioned by their negligence.[1]

The stowage of goods, in the absence of any special agreement, forms part of the obligation which the carrier takes upon himself. It is a duty to be discharged by the master and crew, it is therefore no defence to an action by the shipper against the owner for damage to a cargo of wine, by leakage resulting from bad stowage (where the ship is chartered but the general owners retain the possession by their servants, the master and crew) that professional stevedores had been engaged to stow the cargo, or that such stevedores had been engaged by the charterer's agents, there being nothing by which the master and crew were released from the responsibility in respect of the stowage.[2] The exception of leakage does not protect the shipowners from liability for damage accruing through the negligence of their servants, but shifts the onus of proof and makes it incumbent upon the owners of the goods to prove affirmatively the negligence of the shipowner's servants.[3]

Decay, corruption, inherent deterioration.

The rule of responsibility does not cover losses arising from the ordinary deterioration of goods in

[1] The Helene, Law R. I. P. C. 231.

[2] Sandeman *v.* Scurr, Law R. 2 Q. B. 98.

[3] Czech *v.* The Gen. Steam Nav. Co., Law R. 3 C. P. 14; Phillips *v.* Clark, 26 L. J. C. P. 168.

quantity or quality in the course of transportation, or from their inherent infirmity and tendency to decay, or which arise from the neglect or misconduct of the owner or shipper of the goods.[1] The carrier, for instance, is not liable for any damage from the ordinary decay of oranges, or other fruits, in the course of the voyage.[2] But the master of a vessel is nevertheless bound to take all reasonable care of such *bonâ peritura*, and if they require to be aired or ventilated, he must take the usual and proper methods for this purpose.[3]

So, the carrier is not responsible for the ordinary diminution or evaporation of liquids, or the ordinary leakage of the casks in which the liquors are put, in the course of transportation, or from their acidity or tendency to effervesce. Under this class of cases may be included "ullage," or the quantity of fluid which the cask wants of being full in consequence of the oozing of the liquor: for his implied obligation does not extend to such cases, unless to prevent loss from such causes is within his control.[4]

The common carrier is liable for the safe delivery of all goods entrusted to him, but there is this exception resting upon the common sense of mankind, viz. with regard to any accident which occurs by reason of its nature which may lead to its destruction.

[1] Ang. on Car., s. 210.
[2] Ship Howard v. Wissman, 18 How. 231.
[3] Abbott on Sh., 371; Davidson v. Gwynne, 12 East. Rep. 381.
[4] Ang. on Car., s. 211; Story on Bail, s. 492 a.

Proper vice does not mean a moral vice of the thing itself or its owner; it is something naturally inherent in the thing, which, by its natural development leads to the destruction of the thing. If such exists in the thing and leads to its destruction, it is not a liability involved in the contract.[1] In cases of unforeseen and unprovided necessity, where the owner of the goods cannot be communicated with within reasonable time, or without considerable cost, delay, and inconvenience,[2] the character of agent for the owner of the cargo is forced upon the master.[3] In such cases he must exercise the discretion of an authorized agent over the cargo, as well in the prosecution of the voyage at sea, as in intermediate ports.[4]

This character of agent for the owners of the cargo, is imposed upon the master by the necessity of the case alone and not otherwise. He must put himself in the place of the owner of the cargo, and do what the latter, as a prudent man, would himself do for his own interest if he were present.[5]

Thus, in an action against a shipowner for non-delivery of a cargo of maize which had become heated, and was sold by the defendants at an intermediate port during the voyage, the jury found that the cargo

[1] The Gt. West. Rail. Co. *v.* Blower, 41 L. J. C. P. 271.

[2] The Hamburg, 33 L. J. Adm. 116; The Karnak, Law R. 2 P. C. 513; The Lizzie, Law R. 2 Adm. 259.

[3] Notara *v.* Henderson, Law R. 5 Q. B. 353; 41 L. J. Q. B. 158.

[4] The Gratitudine, 3 C. Rob. 260.

[5] Notara *v.* Henderson, Law R. 5 Q. B. 353; Law R. 7 Q. B. 235.

was damaged by its own inherent vice; that it was impossible for the defendant to carry it to the port of destination; that the sale was what a prudent man would have done under the circumstances; but that there was no such urgent necessity for the sale as to give no time or opportunity to give notice to the plaintiff, the owner of the cargo. On these findings, it was held, that the defendant had no right to sell without the plaintiff's consent, and that the action would lie.[1]

The master must take reasonable care of the goods entrusted to him, not merely by doing what is necessary to preserve them on board the ship during the ordinary incidents of the voyage, but also by taking active measures, where reasonably practicable under all the circumstances, to check and arrest the loss or deterioration resulting from accident, for the necessary and immediate consequences of which the shipowner is not liable by reason of the exception in the bill of lading. This duty which accident, necessity, and emergency impose upon the master, entitles him to charge the owner of the cargo with the expenses properly incurred in so doing.[2]

If the master is obliged to unload upon a wharf, and the cargo is in such a condition as to need

[1] Acatos *v.* Burns, 47 L. J. Q. B. 566.

[2] Cargo ex Argos, Law R. 5 P. C. 165; Notara *v.* Henderson, Law R. 7 Q. B. 225; Australasian Co. *v.* Morse, Law R. 4 P. C. 222; Gt. Nor. Ry. Co. *v.* Swaffield, Law R. 9 Ex. 136.

assortment, it is the master's duty to see that such assortment is properly made.[1]

In deciding upon the measures which he should adopt to check growing damage to the cargo, the master must take into consideration the place, the season, the extent of the deterioration of the goods, the opportunity and means at hand, the interests of other persons concerned in the adventure, whom it might be unfair to delay for the sake of the part of the cargo in peril.[2] If he has to put into port to repair, and does all he can to mitigate an injury to the cargo whilst there, he is not bound to remain until the cargo is in a fit state to be carried on, if this course would unduly protract the voyage; neither would he be justified if the cargo is damaged from sea water, or is otherwise in an unfit state to be carried on, in taking it on merely for the sake of earning freight.[3] Thus, where beans were shipped from Alexandria to Glasgow with liberty to call at intermediate ports, and the ship called at Liverpool, but on going out met with a collision (one of the perils excepted in the bill of lading), and had to put back for repairs which detained her a few days. The beans being wetted by sea water, the plaintiffs offered to receive them there, paying *pro rata* freight, which was refused, full freight being demanded, and the beans were carried on to Glasgow, where on arrival

[1] The Norway, 12 L. T. N. S. 62.

[2] Notara *v.* Henderson, L. R. 7 Q. B. 237.

[3] Vlierboom *v.* Chapman, 13 M. & W. 230; Notara *v.* Henderson, Law R. 5 Q. B. 356.

they were found much deteriorated in value, beyond what they would have been by the mere wetting by the collision, if they had been dried at Liverpool instead of being carried on as they were; had they been so dried, the decomposition would have been materially arrested or mitigated, and it appeared that the beans could have been taken out and dried and reshipped without unreasonably delaying the whole adventure; it was held, that it was the master's duty to have done so, and that his owners were liable for the damage.[1]

If a cargo of hides is liable to perish from worms and the heat of the vessel, at an intermediate port, it is the duty of the master to preserve them by having them beaten or ventilated; and if goods are wet he should, if possible, unpack and dry them, and in order to dry the goods the master may, if necessary, open the packages, but he is not bound to repair the goods.[2]

Loss arising from injurious effects of other goods.

If the goods arrive at the port of destination in a damaged condition, it is for the shipowners or master to prove that the original stowage was good, and that the perils of the sea caused the damage.[3] *Prima facie*, in such case the shipowners and the master are liable to the shipper without proof of personal negligence,[4] unless it appear that the shipper assented

[1] Notara *v.* Henderson, Law R. 5 Q. B. 346.

[2] Parsons on Sh., vol. 2, p. 22.

[3] The Alexandra, 14 W. R. 466; 14 L. T. N. S. 742.

[4] Swainston *v.* Garrick, 2 L. J. Ex. 255; Brass *v.* Maitland, 6 El. & Bl. 483; Gillespie *v.* Thompson, 2 Jur. N. S. 712 n.

to the manner in which his goods were stowed,[1] or that the shipper superintended the stowage, and that the shipowners were ignorant of the nature of the goods and of their liability for injury from the way in which they were stowed,[2] or unless they were so stowed by the shipper's own stevedore without any express orders or interference on the part of the master.[3]

The authorities and text books are all uniformly to the effect that, subject to any stipulations to the contrary in the bills of lading, and in the absence of any notice of a charter, one of the primary duties of the master is to stow the goods carefully. This is a duty arising upon a mere receipt of the goods for the purpose of carriage, and is one which it would require an express contract to supersede or excuse. Therefore, where oxide of zinc in casks was stowed upon bags of sugar, whereby the sugar was tainted with the oxide of zinc, and became damaged and unmerchantable, it was found as a fact that the loading of the oxide was negligent; and upon this the court held it was a wrongful act, not as a breach of contract, but as a wrongful act in itself. If the defendants had done what was done wilfully, that is to say, knowing that it would injure plaintiff's goods, it was clear they would be liable, and it made no

[1] Major *v.* White, 7 Car. & P. 41; Hovill *v.* Stevenson, 4 Car. & P. 469.

[2] Ohrloff *v.* Briscall, Law R. 1 P. C. 231.

[3] Murray *v.* Currie, Law R. 6 C. P. 24; Sandeman *v.* Scurr, Law R. 2 Q. B. 98.

difference if they had done it ignorantly; the duty of care exists in all men not to injure the property of others. That the act was not a mere nonfeasance which was complained of; it was a misfeasance, an act and wrongful, and that the damage done to the sugar was a tortious act, in respect of which the plaintiffs could recover from the defendants, whether the latter were bound by the bill of lading or not.[1]

The carrier is liable to a shipper for damage done to his goods by other goods stowed in the hold of a vessel, without obligation or proof of any wilful or negligent default on the part of the carrier[2]; he is also liable, although the goods are stowed in the usual way, if the injury is caused by the goods of the third party being in bad condition when put on board.[3] So, where oilcake, tobacco and staves were stowed together, on a voyage from New York to London, and on arrival it was found that the oilcake had been considerably damaged by reason of the improper stowage. In an action by the owner of the oilcake to recover damages, several witnesses, who had commanded large vessels, "liners," were called, who stated they had been in the constant habit of stowing oilcake and tobacco indiscriminately, taking no precaution against the heating of the oilcake by ventilation or otherwise; and a stevedore also gave evidence as to the stowing of such cargoes. Sir Robert Phillimore, in

[1] Hayn Roman & Co. *v.* Culliford, 48 L. J. Q. B. 372.
[2] Brass *v.* Maitland, 26 L. J. Q. B. 54.
[3] Ang. on Car., s. 212, note (*c*).

giving judgment for the plaintiff, observed that this practice of stowing, which the shipowner adopted, was *suo periculo*, and that he could not, by the adoption of it, get rid of his obligation to carry the goods of a shipper in proper condition.[1] So also, he is liable for an injury to flour, caused by the effluvium of spirits of turpentine, in the absence of any usage to carry such articles as part of the same cargo.[2]

In an action to recover damages for injury to salt-cake by reason of improper stowage, it was pleaded that the same was delivered by the shipper in bulk, and not in casks, and was consequently stowed in bulk in contact with, between, and amongst casks of salt provisions, but owing to the corrosive and destructive nature of the salt-cake, the said casks, and their hoops, became corroded, rotten and destroyed, whereby the brine and salt liquor in the casks flowed out of them amongst the salt-cake, and washed part of the same away and caused the damage complained of. That the corrosive and destructive nature of the salt-cake was unknown to the defendant, no intimation of its character having been given to him by the plaintiffs, and that the salt-cake was stowed in the manner in which it was, with the knowledge, and by the direction, of the plaintiffs. It was held, that this did not amount to an authority by the plaintiffs to the stowing of the cake in a negligent manner, but that the salt-cake

[1] The Figlia Maggiore, Law R. 2 Adm. 115.

[2] Story on Bail, s. 492, note 3.

having been delivered in bulk, without any notice of its corrosive and destructive qualities, the defendant could not be held liable for the damage; it being no answer to the defendant's plea that the salt-cake was an article known in commerce, and that the defendants might, or ought to have known, what sort of a thing it was.[1]

Dangerous goods.

If goods of a dangerous nature are delivered to a shipowner or master to be carried, and are so packed as to conceal their real character, or if such goods are delivered to a shipowner or master, and they cannot be reasonably expected to know by inspection that the goods are of such a dangerous and destructive nature, it is the duty of the shipper to give due notice of the nature of the goods to the shipowner, or those employed by him; and if he does not give such notice, and damage is caused to other parts of the cargo, or otherwise, by reason of the dangerous nature of the goods, or the insufficient nature of their packing, the shipper is liable to the shipowner for the damage caused by the dangerous nature of the goods.[2] But where the defendant, as owner, chartered a ship to the plaintiffs, and agreed to load a cargo from the plaintiff's factors at Glasgow and convey it to Colombo, and the plaintiffs shipped cambrics and sheetings, in respect of damage to which the action

[1] Hutchinson *v.* Guion, 28 L. J. C. P. 63.

[2] Williams *v.* The East India Co., 3 East Rep. 192; Gt. West. Rail. Co. *v.* Blower, Law R. 7 C. P. 663; Brass *v.* Maitland, 26 L. J. Q. B. 63; Hearne *v.* Garton, 2 El. & El. 66; Alston *v.* Herring, 25 L. J. Ex. 177; 11 Ex. 822; Hutchinson *v.* Guion, 28 L. J. C. P. 63.

was brought, but not wishing to make up the whole cargo with goods of their own, they contracted with M. and Co. to receive from them and carry certain cases of sulphuric acid on board the ship. M. and Co. shipped the cases on board, but neither the plaintiffs nor the said M. and Co. gave notice to the defendants that the cases contained sulphuric acid. On the voyage the acid leaked, and damaged the plaintiff's goods. In an action to recover damages, it was held to be no answer to the action that the defendant had not been informed of the contents of the cases, the act of the plaintiffs not being the proximate cause of the damage, and that assuming that a cross action would lie, the amount of damages would not necessarily be the same in both actions.[1] It is the duty of the shipper of dangerous goods to give notice to all who might be injured by the dangerous character of the article; persons are therefore bound to give reasonable notice of the character of such articles, and are liable, if they do not do so, for the probable consequences of such neglect of duty. Thus, where the defendant caused a carboy containing nitric acid to be delivered to the plaintiff, who was one of the servants of a carrier, in order that it might be carried by such carrier for the defendant, and the defendant did not take reasonable care to make the plaintiff aware that the acid was dangerous, but only informed him that it was an acid, and the plaintiff was burnt and injured by reason of the

[1] Alston *v.* Herring, 25 L. J. Ex. 177.

carboy bursting whilst, in ignorance of its dangerous character, he was carrying it on his back from the carrier's cart; it was held, that the defendant was liable to the plaintiff in an action for damages for such injury.[1]

The clause "If medicinal fluids or any other goods of an inflammable, damaging, or dangerous nature, are shipped, without being previously declared and arranged for, they are liable, upon discovery, to be thrown overboard, and the loss will fall upon the shippers or owners of such fluids or goods," which is frequently found in bills of lading in order to protect the shipowner against the consequences of dangerous goods being shipped without notice, has been rendered almost unnecessary by reason of a recent Act of Parliament[2] enacting some most important provisions to protect masters and shipowners from having dangerous goods handed to them for shipment, or carriage, without due notice of their dangerous nature; and to enable masters or owners to refuse to take on board packages or parcels which they suspect to contain goods of a dangerous nature, and to throw them overboard if sent aboard without notice. These provisions are as follows :—

Sec. 23.—"If any person sends or attempts to send by, or not being the master or owner of the vessel, carries or attempts to carry in any vessel, British or foreign, any dangerous goods; (that

[1] Farrant v. Barnes, 31 L. J. C. P. 137.

[2] 36 & 37 Vict., c. 85, ss. 23, 24, 25, 26, 27, 28.

is to say) aquafortis, vitriol, naphtha, benzoin, gunpowder, lucifer matches, nitro-glycerine, petroleum, or any other goods of a dangerous nature, without distinctly marking their nature on the outside of the package containing the same, and giving notice of the nature of such goods, and of the name and address of the sender or carrier thereof, to the master or owner of the vessel, at or before the time of sending the same to be shipped, or taking the same on board the vessel, he shall, for every such offence, incur a penalty not exceeding one hundred pounds: Provided, that if such person show that he was merely an agent in the shipment of any such goods as aforesaid, and was not aware and did not suspect and had no reason to suspect that the goods shipped by him were of a dangerous nature, the penalty which he incurs shall not exceed ten pounds."

Sec. 24.—"If any person knowingly sends, or attempts to send by, or carries or attempts to carry in any vessel, British or foreign, any dangerous goods or goods of a dangerous nature under a false description, or falsely describes the sender or carrier thereof, he shall incur a penalty not exceeding five hundred pounds."

Sec. 25.—"The master or owner of any vessel, British or foreign, may refuse to take on board any package or parcel which he suspects to contain goods of a dangerous nature, and may require it to be opened to ascertain the fact."

Sec. 26.—"Where any dangerous goods as defined in this Act, or any goods which, in the judgment of the master or owner of the vessel, are of a dangerous nature, have been sent or brought aboard any vessel, British or foreign, without being marked as aforesaid, or without such notice having been given as aforesaid, the master or owner of the vessel may cause such goods to be thrown overboard, together with any package or receptacle in which they are contained, and neither the master nor the owner of the vessel shall, in respect of such throwing overboard, be subject to any liability, civil or criminal, in any court."

Sec. 27.—"Where any dangerous goods have been sent or carried, or attempted to be sent or carried, on board any vessel, British or foreign, without being marked as aforesaid, or without such notice having been given as aforesaid, and where any such goods have been sent or carried, or attempted to be sent or carried, under a false description, or the sender or carrier thereof has been falsely described, it shall be lawful for any court having Admiralty jurisdiction to declare such goods, and any package or receptacle in which they are contained, to be and they shall thereupon be forfeited, and, when forfeited, shall be disposed of as the court directs. The court shall have and may exercise the aforesaid powers of forfeiture and disposal, notwithstanding that the owner of the goods have not committed any offence under the provisions of this Act, relating to

dangerous goods, and be not before the court, and have not notice of the proceedings, and notwithstanding that there be no evidence to show to whom the goods belong; nevertheless, the court may, in its discretion, require such notice as it may direct to be given to the owner or shipper of the goods before the same are forfeited."

Sec. 28.—"The provisions of this Act relating to the carriage of dangerous goods shall be deemed to be in addition to, and not in substitution for, or in restraint of, any other enactment for the like object, so, nevertheless, that nothing in the said provisions shall be deemed to authorise that any person be sued or prosecuted twice in the same matter."

"Neglect of master, pilot, or crew."

By the maritime law, in the absence of custom or agreement to the contrary, it is the duty of the master, on the part of the owner, to receive and properly stow on board the goods to be carried, which, ordinarily, are to be delivered to him alongside. For any damage to the goods occasioned by negligence in the performance of such duty, the owner is liable to the shipper.[1]

Thus, it is the duty of the master to provide proper ropes and tackle for the reception of the goods into the ship,[2] and if a cask be accidentally staved in letting it down into the hold of the ship, the master is answerable for the loss.[3]

[1] Blakie v. Stembridge, 28 L. J. C. P. 331.
[2] Ch. and Tem. on Car. 153.
[3] Goff v. Clinkard, I. Wils. 282.

If the damage results from the misconduct of the master, he is answerable to the owners, and probably also directly to the shipper. If it happens through the misconduct of the mate, or others of the crew, without default on the part of the master, it has been held that the master is not answerable to the owners.[1] Where goods are sent to be laden on board a general ship, the master is not liable to the owner of the goods for damage done to them by the negligent stowage of a stevedore appointed by the charterer, the stevedore not being an agent or servant of the master.

Nor is the master liable, in such case, for the acts of the stevedore, though the charter-party stipulate that the stevedore shall be paid by, and act under, his orders, except the acts of the stevedore be done in pursuance and in the execution of the master's orders.[2]

This duty of the master has, however, in many cases been modified by custom or contract.[3] And his liability for the safe conduct of the goods continues until they are actually delivered to the consignee; when they are once delivered, however, it ceases.[4]

The owners of a ship are responsible to the owners of cargo for any loss accruing from detention, it being by maritime law the duty of the master to

[1] Blakie *v.* Stembridge, 28 L. J. C. P. 331.

[2] Blakie *v.* Stembridge, 28 L. J. C. P. 329; Sack *v.* Ford, 32 L. J. C. P. 12.

[3] Per Willes, J., in Blakie *v.* Stembridge, 28 L. J. C. P. 332.

[4] Kay on Sh., vol. 2, 1157.

convey the cargo to its port of delivery with all expedition; and if by neglecting to avail himself of all fair opportunity, the voyage is delayed and damage accrues to the owners of cargo, the owners of the ship are liable to make good the sum.

Thus, where the master of a ship, whilst waiting for cargo, omitted to take in sufficient stores and provisions for his voyage, and whilst subsequently taking in such provisions and stores, the frost set in and the ship was frozen in port, and detained from the beginning of October until the breaking up of the ice in the ensuing year; it was held, that the shipowner was responsible to the owners of the cargo for such detention.[1]

If the master deviates from the proper course of the voyage, and the goods shipped are afterwards injured by a tempest, or lost by capture, or other peril, the shipper would be entitled to a full indemnity from the master and the owner.[2]

When the pilot continues in charge of the navigation of the ship, it is the duty of the master and crew to keep a good look-out,[3] to attend to the general management of the ship,[4] to see that the ship and her equipments are sufficient and proper, and that her crew are competent,[5] and that obedience is promptly

[1] The Wilhelm, 2 Asp. Mar. Law Ca. 343.

[2] Davis v. Garrett, 6 Bing. 716; Parker v. James, 4 Camp. 112; Max v. Roberts, 12 East. Rep. 89.

[3] The Iona, Law R. 1 P. C. 426.

[4] The Velasquez, Law R. 1 P. C. 494.

[5] The City of Cambridge, Law R. 5 P. C. 459.

rendered to the pilot in all things relating to the management of the ship[1]; and as long as the pilot continues to act, not to interfere with the conduct of the ship, except in cases of extreme necessity.[2]

As soon as the pilot assumes his proper functions on board, he supersedes the master in his control of the ship, in all matters which relate to her navigation[3]; he is bound to use due diligence, care, and reasonable skill, and is answerable if it is proved that the ship either does, or suffers damage, through his default, negligence, or want of skill, the persons under him having done their duty.[4]

If the injury to the goods is caused by the negligence of the shipowner's servants, the shipowner and master will be liable, notwithstanding the exceptions in the bill of lading.[5]

But though the exceptions do not protect the shipowners or master from liability for damage caused by the negligence of their servants, they make it incumbent upon owners of cargo, who seek to render the owners or master liable for such negligence, to prove affirmatively that the injury was caused by such negligence.[6]

The exceptions limit the liability, but not the duty

[1] The Diana, 1 W. Rob. 136.

[2] The Maria, 1 W. Rob. 110.

[3] The Diana, 1 W. Rob. 135.

[4] The Portsmouth, 6 C. Rob. 317.

[5] Czech *v.* Gen. S. N. Co., Law R. 3 C. P. 17; Phillips *v.* Clark, 26 L. J. C. P. 168; Gill *v.* Manchester R. Co., 42 L. J. Q. B. 89.

[6] Czech *v.* Gen. S. N. Co., Law R. 3 C. P. 14.

of the owners and master; nor do they relieve the owners or master from the obligation to navigate with ordinary skill and care. It is still their duty to do what they can by reasonable skill and care to avoid all perils, including the excepted perils. If, notwithstanding such skill and care, damage does occur from these perils, the owners and master are released from liability; but if their negligence has brought on the peril, then the damage is attributable to their breach of duty, and the exceptions do not aid them.[1]

The exception "any act, neglect, or default whatsoever of pilots, master, or crew in the management or navigation of the ship," does not cover damages arising from negligent stowage so as to exempt the shipowner from liability for the same. In a very recent case, which was brought to recover damages for injuries to cargo resulting from the improper stowage of oxide of zinc and bags of sugar together, the following words had been inserted in the bill of lading after the above clause: "It being agreed that the captain, officers, and crew of the vessel, in the transmission of the goods as between the shipper, owner, or consignee thereof, and the ship and shipowner, be considered the servants of such shipper, owner, or consignee." The defence was, that the case came within the above exceptions, and it was contended that the word "transmission," in the above clause, was even more extensive than the word "navigating," and that it included everything to be

[1] Phillips v. Clark, 26 L. J. C. P. 168.

done with the goods, from the receipt of them from the hands of the consignor, to their arrival at their destination. The court, acting upon the principle laid down by Lush, J., in the case of Taylor *v.* The Liverpool and Great Western Steam Company,[1] that a word in the bill of lading being ambiguous and of doubtful meaning, must receive such a construction as is most in favour of the shippers, and not such as is most in favour of the shipowner, for whose benefit the exceptions are framed, held, with the plaintiffs, that the words "in transmission of the goods," if operative at all, had a limiting effect upon the alleged generality of the previous words, and confined their application to a period subsequent to the period at which the locomotion in the ship should commence, and that in the case of an exceptive clause similar to the above, the words "in navigating the ship," or "in transmission of the goods" did not include negligent stowage.[2]

The above case does not carry the shipowner's freedom from liability further than for acts negligently done in the navigation of the vessel, but it was stated in Phillips *v.* Clark,[3] where the shipowner was held liable for the negligent stowage of cargo by his servants, that a carrier might protect himself, even from the effects of his own negligence, by a contract to that effect, if he can find any one to contract

[1] 43 L. J. Q. B. 205.
[2] Hayn Roman & Co. *v.* Culliford, 47 L. J. Q. B. 755.
[3] 26 L. J. C. P. 170.

with him; and it was observed in Grill *v.* The General Iron Screw Collier Co.,[1] that if the shipowners wish to protect themselves from being responsible for a loss occasioned by the negligence of their servants, they must do so by express words. Such a stipulation would be almost repugnant to their contract; still if they wish to raise the question of non-liability for such negligence, they must do so by express terms; and we accordingly find in some bills of lading a clause to the following effect, "negligence or default of master, pilot, or mariners, or others performing their duties," and this has been held by the courts not to be an unreasonable clause, and that the shipowner was not liable for damage which falls within it. Thus, where a cargo of nuts was stowed before the bill of lading was signed, and was subsequently damaged in the course of the voyage by the carelessness of the master and crew; Sir R. Phillimore, in giving judgment for the defendants, said: "The conclusion at which I have arrived, is, that I have only to look at the bill of lading as the expression of the true contract existing between the parties, and to consider whether the delivery of these goods in a different condition from that in which they were originally placed on board does, or does not, fall within the excepted perils mentioned in that bill of lading. It has been contended amongst other objections, for the plaintiffs, that this contract was in itself unlawful,

[1] 37 L. J. C. P. 208.

inasmuch as it professed to provide against due care being bestowed by the carrier upon the goods which he undertook to convey. I must observe that it has not been proved to me that a shipowner is in the category of a common carrier, and that he is bound as a common carrier would be bound, under the liability of an action being brought against him, to carry goods generally; but, even if it were so, according to the principles of the decisions affecting this part of the case, it appears to me it is competent to the common carrier to exempt himself from liability. Assuming, for the sake of argument, that the shipowner was in the category of a common carrier, still it would be competent to him, under the authorities, to have protected himself from liability by such a bill of lading as this: at all events, if not to have protected himself from his own personal negligence, still to have protected himself from the negligence of the servants whom he employed. It must be observed, that it must be presumed that this bill of lading was accepted deliberately by the plaintiffs, though it was, of course, competent to them to have refused so to accept it. The contract does not appear to me in itself to have been unreasonable."[1]

After this case, the insertion of the clause exempting shipowners from neglect became more general. In the year 1875 a great outcry was made, about what was alleged as the contracting of shipowners out of their liabilities by express stipulations in bills of

[1] The Duero, Law R. 2 Adm. 396; 38 L. J. Adm. 69.

lading. Meetings of merchants took place to protest against and oppose all attempts to cast upon them the damage or losses arising from the negligence of the servants of shipowners. On the part of the latter, it was said, "we find seaworthy vessels with certificated masters, mates, and engineers; we do our best to secure immunity from sea damage, but if our servants act negligently and injure our interests, and at the same time inflict loss upon the goods on board, the fault does not rest with us, and we will not convey merchandise by our ships, unless we are exonerated from all liability for the acts of the masters and crew over whom, when they leave port, we have no further control." The question was then narrowed to that of a contract for the carriage of goods under conditional terms. The merchant was not compelled to forward, nor the shipowner to carry, the goods; but if the former consented to the terms of the latter, then the agreement rested on the limitation of liability as expressed in the bills of lading. A shipowner insures his vessel against perils of the sea, but the destruction inflicted by winds and waves does not include the, at times, equally disastrous losses brought about by the carelessness or ignorance of his servants.

Where K. & Co., merchants, London, sold certain goods to the plaintiffs, who were merchants in Dublin, and it was agreed that the said goods should be forwarded to the plaintiff by steamship from London to Dublin. K. and Co. sent the goods by their own carter and on their own carts (according

to their usual course of business) to H. and Co., wharfingers, London, for the purpose of having them placed on board the ship of the defendants, who were carriers by sea. H. and Co. having received the goods, gave a receipt therefor to the carter, on the back of which receipt were indorsed special conditions; amongst others, that the defendants would not be responsible for any loss or damage arising from the negligence of their own officers and crew in the journey from London to Dublin, and this was the usual form of receipt given by the said wharfingers to K. and Co. The ship sailed and the goods were lost, admittedly through the negligence of the officers and crew. The plaintiff, to whom the goods were sent, had paid K. and Co. for the same, and knew nothing whatever of the conditions of the receipts. In an action to recover damages for the loss, it was held that it was not necessary to read over and explain to the plaintiff's agent the conditions embodied in the said receipt. It was sufficient that the parties had the means of knowing what the conditions in the receipt were.

Held also, that the verdict should be entered for the defendants; that they being carriers by sea, the condition was valid, and that K. and Co. being the agents of the plaintiff in the making of the contract, the plaintiff was bound thereby.[1]

[1] Alexander *v.* Malcolmson, 3 Asp. Mar. Law Ca. 245. *See* also Palmer *v.* The Midland Counties R. Co., 4 M. & W. 749; Steward *v.* The London & N. W. R. Co., 3 Hurl. & Colt., 135.

In Steel and Craig *v.* The State Line Steamship Co.,[1] where the shipowners admitted that through the negligence of some of the crew a port on the orlop deck had been left unfastened, it having been merely pulled in and not screwed up, through which the water entered, and found its way into the cargo, consisting of 15,409 bushels of wheat, which had been shipped from New York for Liverpool, the damage to the cargo amounting to £2,793. The court held, that the shipowner was relieved from his liability under the clauses in the bill of lading, which ran as follows: "That they were not responsible for the bursting of bags, or the consequences arising therefrom, or for any of the following perils, whether resulting from the negligence, default, or error in judgment of the pilot, master, mariners, engineers, or persons in the service of the ship, or for whose acts the shipowner was liable, or otherwise, namely, risk of craft, or hulk, or transhipment, explosion, heat or fire at sea, in craft or hulk, or on shore, boilers, steam, or machinery, or from the consequences of any damage or injury thereto, howsoever such damage or injury might be caused, or for collision, straining, or other peril of the seas, navigation or land transit of whatever nature or kind soever."

The Lord President, in delivering judgment, said, he arrived at this conclusion with regret, because he was perfectly satisfied that the limitation of the liability of the shipowners in the manner above

[1] 4 S. C., 657.

stipulated relieved them of responsibility for any amount of negligence on the part of their servants, and was likely to lead to negligence and to be attended with very disastrous results; but if parties would enter into such contracts, the court was powerless to help them.

On appeal, however, to the House of Lords, the judgment of the court below was reversed, and it was held, that as in order to bring the loss within the exception, it must be found that the ship sailed with the port in a seaworthy state, and the jury had not done so, a new trial must be had, Lord Chancellor Cairns observing, "I will assume in favour of the respondents that everything that is mentioned between the words 'not responsible' and the word 'excepted,' is meant to be matter in respect of which there is to be no liability on the part of the shipowner. But, looking at all that is mentioned between those two termini in the bill of lading, it appears to me that everything which is mentioned is matter subsequent to the sailing of the ship with the goods on board. It appears obvious to me that what is here referred to as "peril of the seas" is, as described, something which happens on the transit, whether land or sea transit, and that, of course, does not commence till the ship leaves the port. Therefore, if it be the case, as I submit to your Lordships it is, that in the earlier part of the bill of lading there is an engagement that the ship shall be reasonably fit to perform the service which she undertakes, there

is, in my opinion, nothing in the latter part of the bill of lading which qualifies that engagement."[1]

"Dangers and perils of the sea."

With very rare exceptions, every bill of lading provides against losses arising from the dangers or perils of the sea or river, and the clause protecting the shipowner in this respect, which is usually met with in bills of lading, is as follows:

"All and every other dangers and accident of the seas, rivers, land carriage, and navigation of whatever nature or kind soever excepted."

In his work on "Perils of the Sea," Mr. Bailey defines them as "all losses caused by the action of wind and water acting on the property insured under extraordinary circumstances, either directly or mediately, without the intervention of other independent active external causes." Sir Joseph Arnould says of "perils of the seas": "Under these words are embraced all kinds of marine casualties, such as shipwreck, foundering, stranding, &c., and every species of damage done to the ship or goods at sea by the violent and immediate action of the winds and waves, as distinct from that included in the ordinary wear and tear of the voyage, or directly referable to the acts and negligence of the assured as its proximate and sole conducive cause."[2] Wharton (referring to Jones on Bailments, p. 98), in defining "perils of the sea," says, "They are strictly the natural accidents peculiar to the water, but the law

[1] 3 Asp. Mar. Law Ca. (N. S.) 516.

[2] Arnould on M. I., vol. 2, p. 817.

has extended this phrase to comprehend events not attributable to natural causes, as captures by pirates, and losses by collision, where no blame is attributable to either ship, or, at all events, to the injured ship. The word 'peril,' like *periculum*, Lat., from which it is derived, is in itself ambiguous and sometimes denotes the risk of inevitable mischance, and sometimes the danger arising from the want of due circumspection."

Kent (vol. iii., p. 301, 10th ed.) says, "Perils of the sea denote natural accidents peculiar to that element, which do not happen by the intervention of man, nor are to be prevented by human prudence."

The only exception which he admits to the definition is loss by pirates.

The words "dangers of the river" in the bill of lading, signify the natural accidents incident to the navigation, not such as might be avoided by the exercise of that discretion and foresight which are expected from persons in such employment.[1]

In Alabama, where inland water transportation is very great, there seems to be no disposition to make any distinction between "dangers of the river" and "dangers of the sea"; and it is considered that the "perils of the sea and of the river" are so nearly allied that they may be considered the same, except in the few instances in which the reason differs. That there is a settled distinction between perils of the "navigation" and the "act of God," in bills of

[1] Ang. on Car., s. 168.

lading, is considered to be settled, and that the bill of lading may, in transportation by water, introduce exceptions not existing by the Common Law.[1]

"Dangers of the road," if applied to land, must be construed of dangers of the kind that are properly caused by roads, such as overturning of the carriages.[2]

The following losses have been held to be included in the term "dangers or perils of the sea," &c.:—

Loss by pirates.[3]

From collision when it is without fault or negligence.[4]

By the common risks of navigation, from rocks, sands, rapids, and the like, when the loss occasioned thereby happens without negligence or default in the master or crew.[5]

Damage by sweating when not occasioned by bad stowage or negligence.[6]

Animals being killed or damaged by motion of the ship during a storm.[7]

Where the ship is stranded.[8]

Loss by the wilful, but not barratrous, act of the crew, in throwing the ballast overboard.[9]

[1] Ang. on Car., s. 168.

[2] De Rothschild v. The Royal Mail Steam Packet Co., 21 L. J. Ex. 273.

[3] Pickering v. Barclay, Style, 132; 2 Roll. Ab. 248; Kay on Sh., vol. 1, 411.

[4] Buller v. Fisher, 3 Esp. 67; Smith v. Scott, 4 Taunt. 125.

[5] Fletcher v. Inglis, 2 B. & Ald., 315.

[6] Clark v. Barnwell, 12 How. 272; 19 Curtis 131.

[7] Gabay v. Lloyd, 3 B. & C. 793.

[8] Hahn v. Corbett, 2 Bing. 205.

[9] Dixon v. Sadler, 9 L. J. Ex. 48.

Loss by jettison rendered necessary by storms or tempests.[1]

Where a vessel, for the purpose of discharging her cargo, was fastened by tackles to a barge on one side, and a lighter on the other, but the lighter's tackle breaking, water got into her port holes and damaged the cargo.[2]

While a steamer was loading in a harbour, her draught was increased by the weight of the cargo, until the discharge pipe was brought below the surface of the water, which then flowed down the pipe under the valve, and some cocks or valves in the machinery having been negligently left open, water flowed into the hold and injured the goods.[3]

Loss occasioned by hidden obstructions in the river, newly placed there, and of a character that human skill or foresight could not have discovered and avoided.[4] Thus, running on a recent snag which could not be seen, is within the exception "dangers of the river."[5]

Where a vessel was chartered to proceed to Newport and there load for San Francisco, the freight of which voyage was insured, but before reaching Newport she got ashore, and the time necessary for getting her off and repairing her so as to be a cargo-carrying ship, was so long as to put an end, in a

[1] The Milwaukee Belle, 21 L. T. 801.
[2] Laurie v. Douglas, 15 M. & W. 746.
[3] Davidson v. Burnand, Law R. 4 C. P. 117.
[4] Ang. on Car., s. 168.
[5] Parsons on Sh., vol. 1, 256 n. 3.

commercial sense, to the commercial speculation, and the charterers abandoned the contract, and hired another vessel; it was held, that there had been a total loss of the chartered freight by perils of the seas within the meaning of the policy.[1]

The following losses have been held not to be included in the term dangers or perils of the sea, &c.:—

Collision arising from the negligence of master and crew.[2]

Fire has never been regarded as a peril, danger, or accident of the sea, within the meaning of those terms as known to mercantile usage or the law.[3]

Injury by rats to cargo, although every possible precaution is taken to prevent it.[4]

Damage by cockroaches.[5]

A loss arising from rats eating holes in the ship's bottom is not within the perils insured against by the common form of a policy of insurance.[6]

Loss caused by worms which have destroyed the ship's bottom.[7]

Loss by lightning, though an act of God, is not a peril of the sea.[8]

[1] Jackson *v.* The Union Marine Insurance Co., 44 L. J. C. P. 27.

[2] Lloyd *v.* The Gen. Iron Screw Collier Co., 33 L. J. Ex. 269; Grill *v.* The Gen. Iron Screw Collier Co., 37 L. J. C. P. 205.

[3] The Hongkong and Shanghai Banking Corporation *v.* T. Baker, 7 Bom. H. C. Rep. o. c. J. 203.

[4] Kay *v.* Wheeler, Law R. 2 C. P. 302; Laveroni *v.* Drury, 22 L. J. Ex. 2; The Carlotta, 3 Asp. Mar. Law Ca. N. S. 456.

[5] The Miletus, cited in Parsons on Sh., vol. 1, 258 n.

[6] Hunter *v.* Potts, 4 Camp. 203. [7] Rohl *v.* Parr, 1 Esp. 445.

[8] The Hongkong & Shanghai Banking Corp. *v.* T. Baker, 7 Bom. H. C. Rep. o. c. J. 204.

Loss by heat.[1]

If a ship be driven by stress of weather on an enemy's coast and there captured.[2]

Where a vessel, about to sink from the effects of bad weather, puts into an intermediate port and the master sells the ship and cargo without necessity.[3]

If a ship, hove down on a beach within the tide-way for repairs, be thereby bilged and damaged.[4]

Obliteration of marks.

The owner of the goods, when he presents them for transportation, should always have them properly marked, and if the carrier makes a misdelivery in consequence of their being incorrectly marked, the owner must bear the loss. Goods ought to be plainly and legibly marked, so that the owner or consignee may be easily known; and if, in consequence of omitting to do so, without any fault on the part of the carrier, the owner sustains a loss or any inconvenience, he must impute this to his own fault.[5]

In Krender *v.* Woolcott,[6] it was held, that if a carrier receives goods for transportation, and gives a bill of lading for them, specifying the name of the consignee, he is responsible for the safe delivery of the goods; and, if it is necessary, he is bound to see that the goods are properly marked.

[1] The Freedom, Law R. 3 P. C. 594.

[2] Green *v.* Elmslie, Peake's N. P. C. 212; see also Hahn *v.* Corbett, 2 Bing. 211.

[3] Cannan *v.* Meaburn, 1 Bing. 243.

[4] Thompson *v.* Whitmore, 3 Taunt. 227.

[5] Ang. on Car., s. 136, and note.

[6] 1 Hilton, 223.

The exception "not accountable for inaccuracies, obliteration, or absence of marks, numbers, address, or description of goods shipped," will protect the ship-owner from liability for the misdelivery of the cargo, if he can show that the absence or obliteration of the specified marks caused the landing of the cargo at a port other than the port of destination; but, unless he can prove this, it will not be sufficient for him to show that the packages or cases did not bear, as alleged, on them the name of the port at which they were to be delivered.[1]

Insufficient packing, wear and tear.

Negligent packing upon the part of the owners of the goods, of which the carrier cannot be aware, or could not obviate, will exonerate him from his liability for losses which are caused by such negligent packing.[2]

But this rule must be looked at strictly, for it has been decided, that in an action against a carrier for damage to goods, it is enough to prove the condition and value of the goods when delivered to him, and when received by the consignee; and if the goods are damaged whilst in the hands of the carrier, the consignee is entitled to recover; and it has been also held, that the fact that the damage was partly caused by the packing, goes only to the amount of the damage.[3]

In an action for injury to casks of oil, alleged by the defendants to have arisen from defects in the casks, it was left to the jury to say whether the

[1] Madhub Chunder Dey *v.* Law, 13 Ben. L. R. 394.

[2] Wharton on Neg., sec. 566.

[3] Higginbotham *v.* The Great Northern Ry. Co., 2 F. & F. 796.

injury arose from such defects, and whether, even if it did, the carriers knew or ought to have known thereof, and had acted negligently in sending them on in that state.[1]

It is possible for a consignor so to pack his wares that there shall be no leakage or breakage; and hence, perhaps, comes the ordinary proviso in bills of lading, that for leakage and breakage the carrier shall not be responsible. But this does not relieve the carrier from due diligence in stowage, which he owes under all circumstances, no matter how imperfectly the thing carried may be packed.[2]

It has been held, that cases made of soft wood of an average thickness of $\frac{5}{8}$ of an inch with English hoop iron bands $\frac{5}{8}$ of an inch in width, and No. 25 B. W. gauge at both ends of the cases, were too weak for the conveyance of steel from Europe to China, and that such packing being insufficient, the shipowners were not liable for damage resulting from such bad packing.[3]

In the case of the Peninsular and Oriental Steam Navigation Company *v.* Manekji Nusserwanji Padsha,[4] it appeared that the appellants were carriers between Hongkong and Bombay, and by a condition annexed to their bill of lading, stipulated that they should not be responsible for damage to goods, arising

[1] Cox *v.* London & North Western Ry. Co., 3 F. & F. 77.
[2] Wharton on Neg., sec. 568.
[3] Mit. Mar. Reg., 3rd Oct. 1879.
[4] 4 Bom. H. C. Rep., O. C. J. 169.

from insufficiency of package. It was admitted that the goods were shipped in good order and condition, but had been transhipped on the voyage in accordance with the liberty given to the defendants by the bill of lading. It appeared, that the goods on arrival at Bombay were in such a state that a wholesale merchant would be justified in refusing to receive them, all of the packages being more or less broken. The contents also were in some instances injured, and in others had partially, but not extensively escaped, and lay on the floor of the warehouse belonging to the Customs Department, in which these goods were stored on arrival in Bombay. The goods consisted of glass bangles, yellow stone, and brass leaf. The boxes of bangles contained each about three thousand glass bangles sewed on cards, four pairs of bangles on each card. These boxes were composed of wood-work, three-eighths of an inch in thickness. They were about two feet in length, eighteen inches in width, and eighteen inches to two feet in depth, and weighed about 170 lbs. each, and were made of China pine, fastened together with wooden pegs; they were also fastened with cross pieces of the same wood, and the whole was covered with China matting tied round with pieces of split rattan. Each box of yellow stone weighed about 130 lbs., the yellow stone and brass leaf being in boxes about fifteen inches long, eight to ten inches in width, and of like depth, the wood-work being half an inch thick. They were wrapped

in matting in the same manner as the boxes of bangles. The packages of the three kinds of goods mentioned were proved to be such as are in ordinary use for conveying such goods respectively from China to Bombay—in fact, the only species of packages in which the trade is carried on. In an action brought to recover damages in respect of such injury, it was held, that evidence of mercantile usage or of custom would be admissible to show that the words "insufficiency of package" should not be taken in their ordinary sense, but as meaning insufficient according to a special custom of the China trade. Held also, that evidence of these packages being ordinary China packages, having been always carried by the defendants without objection, was not sufficient, in the absence of proof of negligence, to fix the defendants with liability for damage done to them, there being no proof that it had been the practice, either of the defendants, or any other shipowners protected by a similar clause in their bill of lading, to make compensation for injury to goods contained in such packages.

In English *v.* Ocean Steam Navigation Company,[1] the bill of lading contained the clause "weight, contents, and value unknown." Goods in cases were, on delivery, found to be injured. Held, that the presumption was that they were properly packed in a fit state for transportation, unless there was something in their appearance or condition to afford

[1] 2 Blatchf. C. C. 425; Parsons on Sh., vol. 1, p. 189.

ground for a contrary inference, or unless some evidence to that effect was given.

The exception "Fines and expenses and losses by detention of ship or cargo caused by incorrect marking or by incomplete or incorrect description of contents, or weight, or of any other particulars required by the authorities at the port of discharge, upon either the packages or bills of lading, shall be borne by the owners of the goods," does not appear as yet to have been judicially considered, neither has its practical bearing been fully settled. The English Customs Act 39 and 40 Vict., c. 36, by sec. 66, directs that if any goods are found concealed in any way, or packed in any package or parcel, to deceive the officers of customs, such package or parcel, and all the contents thereof, shall be forfeited; and by sec. 67, "If any person imports or causes to be imported goods of one denomination concealed in packages of goods of any other denomination, or any package containing goods not corresponding with the entry thereof, or shall directly or indirectly, import or cause to be imported, or entered, any package of goods as of one denomination, which shall afterwards be discovered, either before or after delivery thereof, to contain other goods or goods subject to a higher rate or other amount of duty than those of the denomination by which such package or the goods in such package were entered, such package, and the goods therein shall be forfeited," and the person subject to fine. The Indian Sea Customs Act VIII. of 1878 contains

similar provisions, and enacts that if it appears that when any goods are entered at or brought to be passed through a custom-house, that they differ widely from the description given, or the contents thereof have been wrongfully described in the bill of entry, or application for passing them as regards the denomination, character, or condition according to which such goods are chargeable with duty, or that the contents of such packages have been misstated in regard to sort, quality, quantity, or value, or that the goods have been so packed as to deceive the authorities, and such circumstances are not accounted for to the satisfaction of the Customs Collector, such goods and packages will be subject to confiscation and the parties liable to fine.

"Bursting of bags."

Grain is shipped from the Pacific ports in sacks. As a rule, the material of which such sacks are made is of poor quality, and liable to burst from the swelling of the grain, or from superabundant pressure. In cases where there happen to be several consignees, the grain gets mixed, and then the shipowner is called upon to pay compensation. In consequence of the known tendency of the sacks to break open, it is usual to sign bills of lading with a condition that the shipowner will not be accountable "for breakage of seals, torn wrappers, bursting of bags," but notwithstanding this stipulation, claims are frequently made by merchants for depreciation arising from the mixing of the shipments, or for the damage by water to the grain when in bulk or loose. Another not

uncommon cause of dispute between consignees and shipowners springs from the cutting open of the sacks to stiffen the cargo or trim the hold. It is asserted by ship-masters that an entire cargo of grain stowed in sacks is as likely to make a ship unseaworthy as a load in bulk; cutting the sacks is, therefore, frequently resorted to, and this is often done with the consent of the shipper. In a judgment delivered by Mr. Sergeant Wheeler in the Liverpool County Court, in June 1867, in the case of Smyth *v.* Dixon, in which it was stated that before the vessel sailed it was necessary, in order to trim her, that some portion of the sacks should be skipped, and this was done, it was said, to 596 sacks out of 5,320, with the consent of the shippers, it was held, that all the grain taken on board at Valparaiso had been delivered, and that though the bulk had been interfered with by the skipping of a number of the sacks, that interference took place with the consent of the merchant, though the bill of lading was silent on the subject.

On the west coast of South America, however, vessels loading grain cargoes take about one-third to one-half of the cargo in bulk, and remainder in bags; when the sacks are cut and the grain emptied into the hold, it is impossible to keep distinct lots from mixing unless there are separate bins, or divisions; hence claims for compensation are not only made, but established, where there has been no agreement to allow the right of changing from bags to bulk.[1]

[1] Mit. Mar. N., vol. 3, 109.

In the case of the "Arctic," Woodward *v.* Zeriga, the bill of lading holder received the specified quantity of wheat, but during the voyage many of the bags burst, and after the arrival of the vessel and the delivery of the full sacks, the hold was swept and each consignee received his share. The Court held that the merchant was entitled to recover; for the usual clause of not being accountable for leakage and breakage, in the margin of the bill of lading, did not apply, as the loose grain delivered was not shown to be the plaintiff's, and, in point of fact, was necessarily, and to a great extent, composed of other and different grain, and was not a compliance with the terms of the bill of lading. Resin and other impurities had been swept up with the grain. If, therefore, a master receives grain of one description, on completing the voyage, it is a breach of the contract to deliver another, and perhaps less cleanly, description.

In the case of Messrs. Jump and Sons *v.* the owners of the Norwegian barque "Ground-loven,"[1] that vessel took on board 19,738 sacks of grain at Portland, in Oregon, and on discharge 2,862 bags were empty. The grain, it was alleged, became deteriorated by mixing. The case was fully argued on both sides; the merchants contended that the sacks had been purposely cut, as proved by their having been emptied, folded up, and placed in heaps.

[1] Heard in the Hull Ad. Court, and reported in the *Shipping Gazette* of 31st Oct. 1874.

On the part of the shipowners it was averred, that the ship had encountered three terrific gales and had been thrown on her beam ends, which caused the cargo to shift and the bags to burst; a marine surveyor deposed that it was necessary to bleed sacks in grain cargoes, so as to stiffen the ship, and that he had never known a vessel arrive from California without loose cargo. There was no proof that permission had been given to cut the sacks, and as it was sworn that the bags had been bled, the Court, with the advice of the nautical assessors, gave a verdict against the owners of the "Groundloven."

Gold, silver, bullion, &c.

The 17 and 18 Vict., c. 104, s. 503, provides that no owner of any sea-going ship, or share therein, shall be liable to make good any loss or damage that may happen without his actual fault or privity, of or to any gold, silver, diamonds, watches, jewels, or precious stones, taken in or put on board any such ship, by reason of any robbery, embezzlement, making away with, or secreting thereof, unless the owner or shipper thereof has, at the time of shipping the same, inserted in his bills of lading, or otherwise declared in writing to the master or owner of such ship, the true nature and value thereof.

It has been doubted whether this Act of Parliament applies to shipments made in foreign ports, and it would seem, at all events, only to apply to cases in which a shipment is made in a foreign port to England. Where a shipment is made in a foreign

port, it is sufficient to describe the value of the goods in the current coin of the place where the shipment is made, without showing their value in English money.

Therefore, where a shipment of specie was made from Valparaiso to England, and the bill of lading described the property as 1,338 hard dollars, which were coins current at Valparaiso at that time, this was held to be a sufficient description.[1] But a description of a box as "one box containing about 248 ounces of gold dust," is not a declaration of the true nature and value to satisfy the statute.[2]

The 516th section excludes the master from the protection afforded by the Act, although he may also be owner or part owner of the ship, so that the master will remain liable as at common law, unless the bill of lading protect him against a loss by robbers.

We find that most bills of lading contain stipulations against loss of gold, silver, bullion, and similar articles of value, unless the nature of the same is declared at the time of shipment; the usual clause being as follows: "not accountable for gold, silver, bullion, specie, jewellery, precious stones or precious metals, or beyond the amount of £100 for any one package, unless the bills of lading are signed for such goods and the value declared therein." The shipowner can only demand that the shipper should make a declaration of what he *bonâ fide* believes to be the value of the

[1] Gibbs v. Potter, 11 L. J. Ex. 376.

[2] Williams v. The African Steam-ship Co., 26 L. J. Ex. 69.

articles forwarded, and the omission to enumerate all the articles contained in a box, does not necessarily vitiate the declaration.

Thus, where *A.* was the consignee and holder of a bill of lading signed by *B.* at Bombay, as Master of the steam vessel "John Bright," for the safe carriage and delivery of a box addressed to *A.*, which, in fact, contained diamonds of the value of Rs. 11,670, 3 rubies, and 3 emeralds, in all of the value of Rs. 15,940. One of the conditions in the bill of lading was as follows: "a written declaration of the contents and value of the goods is required by the owner, and must be delivered by the shipper to the owner's agent with the bills of lading. A wrong description of contents or false declaration of value shall release the owner from all responsibility in case of loss, &c., and the goods shall be charged double freight on the real value, which freight shall be paid previous to delivery." The declaration in this case was contained in the following letter from the shipper to the agent of the shipowner:—"Be good enough to give me an order for a small box containing diamonds to the value of about Rs. 14,000, to be shipped on board the steamer 'John Bright' for Calcutta." The box was lost by the negligence of *B.* or his servants. In a suit by *A.* to recover the value of the goods, viz., Rs. 14,000, it was held, that all the shipowner was entitled to was, that the shipper should make a declaration of what *bonâ fide* he believed to be the value, and that the declaration

as to the contents was not vitiated by the omission to enumerate all the different species of articles contained in the box. That upon the evidence the declaration as to the value and nature of the contents was *bonâ fide;* therefore, *A.* was entitled to recover the value of the diamonds lost.[1]

The transportation of passengers or of merchandise, or of both, does not necessarily imply that the owners hold themselves out as common carriers of money or bank bills. The nature and the extent of the employment or business which is authorized by the owners on their own account and at their own risk, and which either expressly or impliedly they hold themselves out as undertaking, furnishes the true limits of their rights, obligation, duties, and liabilities.

If a steam-boat company is incorporated by charter which authorizes the company to carry goods, wares, and merchandise, the company will not be liable for the loss of bank bills which the Master undertakes to carry, the carriage of the same being no part of their ordinary business under the charter.[2]

In cases where specie or other goods are undertaken to be delivered at a certain place other than the steamer's ultimate port of discharge, or at some place to which the vessel cannot proceed, and the same are to be forwarded on to their place of destination by the shipowners from the port at which the vessel

[1] Dhunjeebhoy Byramji Metha *v.* J. Betham, 2 Ind. Jur. N. S. 305.
[2] Ang. on Car., ss. 101, 102, and 103.

stops, at their own expense, it is usual for the shipowners to stipulate that they act only as forwarding agents from that port, and that the specie or goods will be forwarded by rail, or otherwise, to its place of destination at the merchant's risk; the shipowner's liability ceasing as soon as the specie or goods are free from the vessel's tackles.

Where railway companies hold themselves out as carriers, and receive goods to be carried to places beyond the limits of their own line, and even beyond the realm, they are responsible for a loss of or injury to the goods, although the same may not have happened on their own line of railway.[1]

Where, however, on the delivery of goods by the plaintiff at Bristol to the defendants, he received from them a note stating that the goods were to be conveyed by the Company as below, and on the conditions stated on the other side: and below was a statement that Bristol was the station from which, and Paddington the station to which, the goods were to be carried, and that the plaintiff's address was at Brompton. One of the conditions at the back of the receipt stated that goods addressed to consignees resident beyond the immediate vicinity of the company's goods station would be forwarded by public carrier, or otherwise, as opportunity might offer; but that the delivery

[1] Scothorn *v.* The South Staffordshire Ry. Co., 7 Rail & Can. Ca. 810; Wilby *v.* The West Cornwall Ry. Co., 27 L. J. Ex. 181; The Bristol & Exeter Ry. Co. *v.* Collins, 29 L. J. Ex. 41; Crouch *v.* The L. & N. W. Ry. Co., 7 Rail. & Can. Ca. 717.

of goods by the company would be considered as complete, and the responsibility of the company cease, when such carrier received the goods, and that the company would not be responsible for loss or damage to goods beyond the limits of their railway. The plaintiff's goods were safely conveyed to the Paddington Station, and there given to a person specially appointed by the Company for the collection and delivery of goods, and through his negligence were damaged before their delivery at Brompton; the defendant's charge included the carriage from Paddington to Brompton. It was held, that the contract of the defendants was to carry from Bristol to Paddington only, and that they were not liable for the subsequent damage.[1]

It is no excuse for an omission to deliver money delivered to a common carrier, to be by him delivered to a bank, that he went to the bank and found it shut.

Thus, in an action of assumpsit against the defendant as a common carrier, for a breach of his undertaking, in that capacity, to convey a package of money belonging to the plaintiff in Connecticut to Poughkeepsie, in the State of New York, and there deliver it to a bank in that village; and it appeared, that when the defendant arrived at Poughkeepsie, the bank was shut; that he went twice to the house of the cashier, and not finding him at home, brought back the money,

[1] Fowles v. The G. W. Ry. Co., 22 L. J. Ex. 76; s. c.; 7 Rail & Can. Ca. 421.

and offered it to the plaintiff, who declined to accept it, and that the defendant then refused to be further responsible for any loss or accident. It was held, that in the absence of any special contract (none was proved in the case), these facts did not constitute a legal excuse to the defendant for the non-performance of his undertaking. That the bank was shut when the carrier went there could amount to nothing, unless it further appeared that he went there at a proper time during the ordinary business hours, and even then the court could not say, as a matter of law, that this would be a legal excuse. That there may be circumstances which would excuse a carrier from the delivery of a package of money to a bank to which he has undertaken to convey and deliver it, is doubtless true; it would depend upon the degree of diligence which the carrier used to let the officers of the bank know that he had a package to deliver there. The proper time for a carrier of specie to deliver it to a bank to which it is consigned, is not limited to banking hours, unless such is the special contract or the implied usage of the place; and an offer to deliver it at any time during the usual hours of business, reasonable regard being had to its safety, and the convenience of the consignee, is as good as one made in banking hours.[1]

If it is proved that goods are tendered by the carrier to the consignee late in the day, after the termination of the hours of business, and when the consignee

[1] Ang. on Car., sec. 286.

has dismissed his hands, and is thus incapable of receiving and putting away the goods, the tender of delivery is then unreasonable as to time, and the consignee is guilty of no fault or laches in declining to receive them. Therefore, the duty of a carrier, under such circumstances, is to keep the goods still in custody, and he continues to hold them under all his responsibilities as carrier.[1]

In Marshall *v.* American Exp. Co.,[2] a carrier delivered a package of money to the teller at a bank, at half-past five in the afternoon. He refused to receive it, on the ground that the cashier had gone home, and the vault was locked up. The carrier put it in his own safe, and during the night the money was stolen. Banking hours closed at 4 P.M. Held, that the carrier was not liable. It appeared in evidence that the bank had been accustomed to receive money from the carrier after banking hours.

In Eagle *v.* White, in Pennsylvania,[3] the defendants, who were common carriers on a railroad from Philadelphia to Columbia, undertook to carry certain boxes of goods belonging to the plaintiff, from Philadelphia to Columbia. The cars arrived at the latter place about sundown on a Saturday evening, and by direction of the plaintiff were placed on a sideling, that is, a side track. The plaintiff declined receiving the goods that evening, on the ground that it was too late;

[1] Ang. on Car., sec. 287.
[2] 7 Wis. 1.
[3] 6 Whart. 505.

whereupon the agent of the defendants left the cars on the sideling, taking with him the keys of the padlocks with which the cars were fastened, and promised to return on Monday morning. The cars remained in this situation until Monday morning, when they were opened by the plaintiff by means of a key which fitted the lock, and on examination it was discovered that one of the boxes had been opened, and the contents carried away. It was held, that the defendants were liable to the plaintiff for the value of the goods lost. Rogers, J., who gave the decision of the court, was of opinion that if the tender was wanting in any one of the essential requisites of a proper time, a proper manner, and a proper place, the responsibility as carrier still continues. Although his strict accountability of carrier may cease, said the learned Judge, he becomes liable, and as such must take ordinary care of the goods.[1]

Loss of, or injury to, horses or cattle, &c.

It is usual for shipowners, whose vessels are in the habit of carrying live cattle, to insert in the bill of lading a clause to the following effect:

"The owners of the vessel will not be liable for the loss of, or injury done to, any horses, cattle, or other animals except as to £50 for horses, £15 per head of veal cattle, and £2 per head as to sheep, pigs, and dogs. The owners will not be liable for any loss arising from suffocation or other causes occurring to horses, dogs, cattle, or other animals, or from kicking, plunging, or viciousness of the same

[1] Ang. on Car., sec. 288.

in transit, nor for any damage arising from shipping or landing, or while in the possession of the owners or their agents before or after the voyage, from whatever cause they may remain in such possession."

Notwithstanding this exception in the bill of lading, the shipper will be entitled to recover for any loss or damage to his cattle, if it is proved that such loss or injury is the result of negligence on the part of the carrier. Thus, where several cattle were suffocated and killed from the vessel overturning, it having been sent to sea without proper ballast, the ship-owner was held responsible for the loss, which was occasioned by his negligence.[1]

Where a dog had been delivered to a carrier and the animal escaped by means of slipping from the noose about his neck, the carrier was held liable, because he had the means of seeing that the animal was insufficiently secured; and Lord Ellenborough said, that the delivery of the dog was not like the case of goods imperfectly packed, since there the defect is not visible, but the defendant had the means of seeing that the dog was insufficiently secured, and he was bound to lock up the animal, or take other proper means to secure it.[2]

If a horse escapes from the fastenings on board of a steamboat and is lost in the river, the owners of the boat are responsible; for the horse must have been

[1] Leuw *v.* Dudgeon, cited in Czech *v.* The Gen. S. N. Co., Law R. 3 C. P. 17 n.

[2] Stuart *v.* Crawley, 2 Stark. 323.

negligently fastened, or the loss would not have occurred; and *prima facie*, this negligence is attributable to the owners of the boat or their servants.[1] So, where an animal is sent over a railroad, the company are liable for any injury it may sustain, either by the improper construction of the carriage, or the want of reasonable equipments, or the improper position of the carriage in the train.[2] The rule with regard to proper equipments to insure the safety of an animal, holds also as to ferry boats.[3]

If the animal is injured or destroyed by the peculiar risks to which it is exposed, the carrier is clearly excusable. Thus, if horses or other animals are transported by water, and in consequence of a storm they break down the partitions between them, and by kicking each other some of them are killed, the carrier will be excused, and it will be deemed a loss by perils of the sea.[4] And in case of an animal sent by railway, it has been ruled that the company are not liable for an accident arising from the animal's own viciousness or want of temper.[5]

In Clarke *v.* Rochester Railway,[6] it was held, that a carrier of animals is responsible for any injury which can be prevented by foresight and care,

[1] Porterfield *v.* Humphreys, 8 Humph. 497.

[2] Ang. on Car., sec. 214.

[3] Ibid.

[4] Gabay *v.* Lloyd, 3 B. & C. 793; Lawrence *v.* Aberdein, 5 B. & Ald. 107.

[5] Ang. on Car., sec. 214 *a.*

[6] 4 Kern. 570.

although arising from the conduct of the animals, but that he is not an insurer against injuries arising from the nature and propensities of the animals, and which diligent care cannot prevent. The carrier is not liable for loss or injury to cattle, arising from the negligence of the owner, in not being at the place of their destination to receive the same on arrival. Thus, where a horse was sent by railway directed to the owner at Eton, the sender signed a document in the following terms:—"Mr. Wise paid for one horse 12*s.* 6*d.*, Newbury to Windsor. Notice.—The directors will not be answerable for damage to any horse conveyed by this railway." The horse arrived in safety at Windsor station, but the owner not appearing to claim it, it was forgotten and left tied up in a horse-box in an exposed situation for twenty-four hours, and was injured by such neglect. As the condition was reasonable, the company was held not responsible for the injury done; it being stated by the Court, that it was the duty of the sender to have sent an intimation that the horse was coming, in order that some person should meet it at the end of its journey, and that though the company was to a certain extent blameable, they were freed under the contract.[1]

Where a plaintiff sent three horses, including a mare, to the defendant's wharf at Wapping, for transport by one of the defendant company's steam-ships to Aberdeen. The horses were not carried under

[1] Wise v. The Gt. W. R. Co., 25 L. J. Ex. 258.

any special conditions, but were shipped on board without any bill of lading. The vessel encountered some rough weather during the voyage, and partly owing to such rough weather, and partly to the mare being thereby frightened, and consequently struggling, she received injuries which caused her death. It was held by the Court of appeal, reversing the decision of the Court of Common Pleas Division, which had been given in favour of the plaintiff, that a common carrier has done all that is reasonably to be required of him, if he has used all the means to which prudent and experienced carriers ordinarily have recourse, to insure the safety of goods entrusted to them under similar circumstances. And that there was no foundation for the doctrine which had been laid down in the judgment of the Court below, that all owners of ships carrying goods for hire, whether they be common carriers or not, are subject to the same liability as that which attaches to the common carrier.[1]

"Cargo may be landed and warehoused, if not taken delivery of within a reasonable time after arrival."

By the Merchant Shipping Amendment Act, 1862, (25 and 26 Vict., c. 63, s. 67,) a shipowner is empowered to land goods imported in his ship from foreign parts, subject to the condition that "if before the goods are landed the owner thereof has made entry for the landing and warehousing thereof at any particular wharf other than that at which the ship is discharging, and has offered and been ready to take delivery thereof, and the shipowner has failed to

[1] Nugent *v.* Smith, 45 L. J. Q. B. 697.

make such delivery, and has also failed at the time of such offer to give the owner of the goods correct information of the time at which such goods can be delivered, then the shipowner shall, before landing or unshipping such goods under the power hereby given to him, give to the owner of the goods twenty-four hours' notice in writing of his readiness to deliver the goods; and shall, if he lands or unships the same without such notice, do so at his own risk and expense." Under this section the owner of the goods, when he makes an offer to take delivery of them, must be in a condition to receive the same if the offer be then accepted, in order to entitle him to the benefit of such condition; and that when such offer is made, the shipowner, if he then fails not only to make delivery of the goods, but also to give such owner of the goods information of the time at which they can be delivered, is bound to give the twenty-four hours' notice above specified, before he lands the goods, although he was never asked to give such information.[1]

The word "fails" in section 67 need not imply a wilful default in the cargo owner, and the shipowner may land goods and warehouse them whenever the delivery to the owner within the proper time has been prevented by force of circumstances, whether the latter is to blame or not.[2]

Where sixty-five pipes of lemon juice were shipped

[1] Beresford *v.* Montgomerie & another, 34 L. J. C. P. 41.

[2] Wilhelm Miedbrodt *v.* James Fitzsimon, 44 L. J. Adm. 25.

on board the defendant's ship to be carried to London, under two bills of lading, drawn to order, and containing the following clause, "Simultaneously with the ship being ready to unload the abovementioned goods, or any part thereof, the consignee of the said goods is hereby bound to be ready to receive the same from the ship's side; and in default thereof, the master or agent of the ship is hereby authorized to enter the said goods at the Custom-house, and land, warehouse, or place them in lighters, at the risk and expense of the said consignee." The ship arrived in London, and the plaintiff, who was the consignee of the said goods, was not ready till fifteen pipes had been landed; being then ready, he demanded delivery of the residue, but the master (although no additional expense would have been incurred) refused to deliver to him, and landed the residue at his expense, claiming a right so to do as he was not ready before any goods were landed. It was held, that the master was wrong, and that the plaintiff was entitled to have the residue delivered to him, both on the construction of the contract, and of Stat. 25 and 26 Vict., c. 63, s. 67, sub-section 5.[1]

Where there is no express stipulation in a bill of lading, it is an implied term of the contract contained in it that the consignee named in the bill of lading, or his assigns, will take delivery of the goods within a reasonable time; and the person to whom the

[1] Willson *v.* The London, Italian, and Adriatic St. Nav. Co., 35 L. J. C. P. 9.

property in the goods has passed by reason of such consignment, is, by virtue of the Bills of Lading Act, 1855 (18 and 19 Vict., c. 111, sec. 1), subject to the liability so to take them.

Where the charterers and the shippers are the same persons, such contract will still be implied in the bill of lading, notwithstanding the existence of an express stipulation in the charter-party between the charterers and the shipowner, in reference to the same matter.[1]

Where the bill of lading contained no provision for the immediate landing of the goods on arrival at the port of discharge, it was held, that after a reasonable time after the arrival of the vessel, forty-eight hours in the case of a sailing ship, and somewhat less in the case of a steamer, the master was at liberty, if the consignee had not then sent boats for them, to land the goods at the Custom-house wharf, or other place sanctioned by the Customs authorities; and such landing was not unlawful, or a breach of contract as carrier, on the part of the master. And that the landing of goods under the above circumstances, and setting them apart on the Custom-house wharf for the consignee, did not constitute a delivery of them to the consignee; but that such goods, after being so landed, continued in the possession of the master as carrier.[2]

In all cases the master is required to give notice

[1] Fowler *v.* Knoop, 48 L. J. Q. B. 333.

[2] The Hongkong and Shanghai Banking Corporation *v.* Baker, 7 Bom. H. C. Rep. O. C. J. 186.

to the consignee of the arrival of the vessel, and of his readiness to discharge the cargo; and knowledge, therefore, casually acquired that the vessel has arrived and will discharge her cargo at a particular wharf, is not enough. Generally, if a notice in the newspaper is relied on, it must be shown that the consignee read the notice. If, however, the consignee is absent or cannot be found after diligent search, the want of notice is excused. If the master has wrongfully omitted to sign a bill of lading, and has sailed without learning the names of the consignees, he cannot avail himself of his ignorance as an excuse for not giving notice of the landing of the goods. But, if it is the fault of the shipper that there is no bill of lading, notice published in a paper taken by the consignees is sufficient. And it is the duty of the master, if no consignee is named in the bill of lading, to store the goods for the benefit of the owner. And this is his duty generally, when the consignee refuses to receive the goods.[1]

Where the bill of lading stipulates that "the cargo is to be discharged immediately after the arrival of the steamer, or the same will be transhipped into lighters, or landed or warehoused at the expense and risk of the consignees," if the consignees fail to comply with such stipulation, the master may proceed with the discharge of the cargo. Thus, if a steamer with grain arrives at her port of discharge at 2 P.M., notice of which is simultaneously given to

[1] Parsons on Sh., vol. I., 225.

the consignees, who promise to send lighters at 7 o'clock the next morning: the craft not coming alongside till 2 P.M., the master commences to discharge the cargo at noon, and will be justified in landing the goods, both under the provisions of the bill of lading, and by sub-section 1 of clause 67 of the Merchant Shipping Act, 1862, without waiting 24 hours before commencing such discharge; sub-section 1 providing that if a time for the delivery of the goods is expressed in the charter-party, bill of lading, or agreement, then the goods may be landed or unshipped at any time after the time so expressed.

Under the terms of a bill of lading, goods were to be delivered from the ship's tackle as fast as the steamer could discharge, failing which, the agents were to be at liberty to land the goods at their godowns; the bill of lading further, amongst other exceptions, provided that the shipowners should not be liable for loss by fire. The steamer, on arriving at the port of discharge, came alongside the wharf, and commenced unloading at the custom-house godowns without giving the consignees the option of landing the goods from the ship's tackle. The consignees, however, did not object to the goods being landed at the godowns, and they paid, also without objection, a sum for the wharfage of a part of the goods in the godowns. It was held, that the shipowners, if the goods when placed in the godowns were in their possession as carriers, were protected under the clause of the bill of lading,

providing against fire, as much as if the fire had occurred on board ship; and, on the other hand, if the goods were in possession of the shipowners as wharfingers, they were not liable for the loss, inasmuch as the goods were destroyed by fire without any default on their part.[1]

But the stipulation that "the goods may be landed at the risk of the shipper," does not exempt the shipowner from the obligation to take proper precautions to prevent damage to the goods after landing, and it is his duty to protect them from injuries that may be occasioned by rain or other similar causes, by covering them with tarpaulins when piled on the quays awaiting delivery or deposit in a warehouse.

A. and Co. at Madras shipped by the B. I. S. N. steamer "Mahratta" a box of coral, to be delivered to their agent M. at Bimlipatam. At the time of shipment they declared the value and paid enhanced freight on account of such value. By the bill of lading the Company undertook to deliver the case in good order, at Bimlipatam to the consignee M., subject to certain conditions annexed. By one of those conditions, if the consignee did not take delivery when the ship was ready to discharge, the goods might be warehoused at the merchant's risk, and the Company's liability was to cease when the goods left the ship's side. The consignee did not take

[1] Chin Hong & Co. *v.* Seng Moh & Co., I. L. R. 4 Cal. Ser., 736.

delivery at the ship's side, and the Company's agent at Bimlipatam took the case to the Custom-house, as he was bound to do by the Regulations of the port. If the Superintendent of the Custom-house had known that the case contained corals, it would have been placed in an inner room, but the Company's agent did not know the contents of the case, and therefore was unable to give any such information to the Superintendent. While the case was lying at the Custom-house, application was made, on plaintiff's behalf, to the Company's agent for delivery of the case upon the usual guarantee. The agent refused to deliver the case without the production of the bill of lading. Afterwards the bill of lading was received from Madras, and the case was delivered up. At some time between its leaving the ship's side and delivery to the consignee, the case was opened and a portion of the contents stolen. Held, that the defendants were not liable, as they had performed their duty as carriers by carrying the case to its port of destination, where the consignee ought to have taken delivery at the ship's side.[1]

By the terms of a bill of lading, a ship was "to take her regular turn in unloading" at the port of discharge. On the arrival of the ship the consignee refused to accept and unload the cargo, in consequence of some dispute between himself and the consignor, and the ship was kept several days without

[1] MacKinnon & MacKenzie v. Charles Minchin, 6 Mad. H. C. Rep. 353.

being unloaded. Held, that the bill of lading was a contract between the master and the consignor, and that A., who was master and part-owner, was entitled to recover damages from the consignor for his breach of contract in not allowing the ship to unload in her regular turn, according to the terms of the bill of lading.[1]

"Blockade."

Lord Stowell says, that "a blockade is a sort of circumvallation (surrounding, enclosing,) round a place, by which all foreign commerce is, as far as human force can effect it, cut off. It is intended to suspend the entire commerce of that place, and a neutral is no more at liberty to assist the traffic of exportation than of importation. The utmost that can be allowed to a neutral is, that having taken on board a cargo before the blockade begins, she may be at liberty to retire with it. But it must be considered as a rule, that a neutral ship, departing, can only take away a cargo truly and honestly purchased and delivered before the commencement of the blockade, and if she afterwards takes on board a cargo, it is a fraudulent act, and a violation of the blockade. The blockade commences when it is really supported by sufficient forces; it ceases when these forces do not further support it; in other terms, the reality of a blockade is the sole condition of its existence. Not only an attempt to enter the blockaded port in violation of that blockade is illegal, but from the moment of quitting port to sail on such a desti-

[1] Cawthron v. Trickett, 1 Asp. Mar. Law Ca., 414.

nation, and with the purpose of entering the blockaded port, the offence of violating the blockade is complete, and the property engaged is subject to confiscation. And it has been held, that sailing after notification with instructions to proceed to the mouth of the harbour of the blockaded port, and inquire if the blockade was raised, is a forfeiture of neutrality and a ground for confiscation."[1] So a vessel sailing without notice of the blockade, will be subject to condemnation if she touches at an intermediate port, and there learns the fact of the blockade, after which she attempts to enter the blockaded port.[2]

If a vessel is captured in attempting to enter a blockaded port, because she is in a leaky condition, it must be proved that entering of the blockaded port arose from an imperious and overwhelming necessity.[3]

As regards a contract to deliver a cargo at a port which is likely to be interrupted by the outbreak of hostilities, the master ought not to sail with that cargo without having a written authority in the bill of lading, or otherwise, from the shipper, giving him full discretion as to how to act with respect to the goods, in the event of the port of destination being blockaded, or of any other interruption resulting from a state of war. Hence, we find that it is usual

[1] The Irene, 5 Rob. 76.
[2] The Columbia, 1 Rob. 138.
[3] The Panagia Rhimba, 3 Jur. N. S. 23.

for bills of lading to contain a stipulation authorizing the master, in case of blockade or interdict of the port of discharge, or if the entering of, or discharging in, the port shall be considered by the master unsafe by reason of war or disturbances, to land the goods at the nearest safe and convenient port, at the expense and risk of the owners of the goods, and that the ship's responsibility will cease when the goods are so discharged into proper and safe keeping.

In an action for breach of a charter-party, by which it was agreed that the defendant's vessel should proceed to a port of loading, and after loading a cargo convey it to a foreign port, it was pleaded, that before breach there was a war between the country of the port of destination and another country, so that the performance of the charter-party became illegal, and the defendants refused to perform it. It was held, that the plea was good, as the blockade was within the meaning of the exception, "restraints of princes" in the bill of lading, and that the defendants were not bound to have proceeded to the port of loading, or to have waited in anticipation of the removal of the blockade, in the absence of anything to lead to the inference that it would be removed within a reasonable time.[1]

According to both English and German law, an apprehension of capture, founded upon circumstances calculated to affect the mind of a master of ordinary

[1] Geipel v. Smith, 41 L. J. Q. B. 153.

courage, judgment, and experience, would justify delay.

Thus, where S. R., a German ship with an English cargo, being in need of repairs, put into Valparaiso in the month of August, and there ascertained the existence of the war between France and Germany. The repairs were completed on the 21st of September, but the master, under the advice of his consul, did not set sail till the 23rd of December. In an action for delay in delivery of the cargo, it was held, that under the circumstances, the risk of capture was such that the delay was justifiable.[1]

"Quarantine. Pratique."

The Venetians are believed to have been the first to establish what we now understand as "Quarantine," and it is probable that their sanitary regulations against the introduction of the plague were first issued in 1484, but it was not until the plague of Marseilles, in 1720, that quarantine regulations were thoroughly understood.

The application of the particular provisions of quarantine depends on the nature of certain documents, or certificates called "Bills of Health," which the British consuls residing in the ports of the Mediterranean and elsewhere, are directed to furnish to all ships that may come from thence. These bills describe the state of the country, in respect of the existence or non-existence of the plague at the time

[1] The San Roman, 41 L. J. Adm. 72; s.c. 42 L. J. Adm. 46; Pole v. Cetcovich, 30 L. J. C. P. 102; The Heinrich, Law R. 3 Adm. 424.

of the departure of the vessel, and are of three kinds :—

The first is what is denominated a "clean bill," which imports that at the time of sailing no infectious disorder existed, nor had any case indicative of it occurred during the previous forty days.

The second is called a "suspected bill," in which the general health of the place is stated, together with the occasional arrival of vessels coming to such port from infected places, which subjects it to suspicion, although no illness among the crew may have appeared.

The third is a "foul bill," and imports the existence of the infection at the port, or in the country, at the period of the departure of the vessel from the port whence she sailed.

It is the duty of the British Consuls to furnish masters of all vessels sailing from the ports within their districts, with certificates, written upon the back of the bills of health, specifying whether any, and what part of the cargo had been received on board in full pratique, from the shore, or whether it had been received from the lazaretto, or transhipped from any other vessel.

A vessel in quarantine is still theoretically in transitu, and if the agent of the consignor gives notice and claims the cargo during such period, there is sufficient stoppage of the goods to prevent the property vesting in the assignees of the consignee, if he should become bankrupt, even although one of

the assignees had already boarded the vessel and taken possession of, but not removed, the cargo.[1]

"Pratique" is what a vessel receives when she has liberty to unload without impediment from the laws of quarantine. Where such laws exist, vessels arriving from suspected countries must have a certificate to enable them to unload; and this is called being admitted to pratique.

The word itself means "liberty to unload." If the vessel arrive at a place where there is no officer to examine and certify, that makes no difference to the shipper; he looks only to the actual liberty of unloading; how he obtains it is immaterial. Where there are officers of quarantine, a vessel coming from a country not suspected, has pratique without any form being gone through.[2]

The statute passed on the 27th June 1825, 6th Geo. IV., c. 78, "An Act to repeal the several Laws relating to the performance of Quarantine and to make other provisions in lieu thereof," consolidates the chief enactments of the former statutes concerning quarantine, and is in force in the whole of the United Kingdom.

In conformity with the principles laid down in the convention relating to health, made at Paris, February 3rd, 1852, between France, Sardinia, Portugal, Turkey, and Tuscany, the high contracting parties adopted general regulations to be observed

[1] Holst *v.* Pownal, 1 Esp. 240.

[2] Bailey *v.* De Arroyave, 7 Ad. & E. 919.

in their ports in the Mediterranean and in the Black Sea, which were to be the basis of the special rules of each country; and those rules were framed so as to establish the greatest uniformity possible in the health service of the different countries.

Quarantine is of two kinds, viz., of observation, and strict.

Quarantine of observation commences for vessels and all they carry from the time of a health officer boarding them, and from the time of measures being taken for airing and purifying them. Strict quarantine commences for the vessel, and the persons and goods on board, from the time that the cargo to be landed shall have been so; for the cargo landed in the lazaret, or in any spot set apart for the purpose, from the time of a purifying process being resorted to; for the persons disembarked, from the time of their entrance into the lazaret.

A quarantine commenced on board ship may always be continued in the lazaret.

The quarantine of observation is limited to observing during a fixed period, the vessel, the crew, and the passengers, and does not entail the discharge of the cargo in the lazaret.

With a few exceptions the cargo of every description on board a vessel with a clean bill of health, which vessel is in good condition and well kept, and which has not had on board either any death or any suspicious disease, will be exempt from all sanitary

measures, and together with the vessel, the crew, and the passengers, be at once admitted to pratique.

Leather, hair, waste paper, and rags of all kinds are excepted. Cargo of this sort may, even when accompanied by a clean bill of health, be subjected to sanitary measures. Cargo and things spoilt or rotten are equally excepted.

In conformity with Art. V. of the Convention, and in order to carry out sanitary measures, cargo is divided into three classes.

The following belong to the first class, and are subjected to an obligatory quarantine and to purifying processes, viz.: old clothes and articles in common use, rags and waste paper, leather and skins, feathers, hair, and in general any parts of animals, and, lastly, wool and silk stuffs.

The following belong to the second class, and are liable to perform quarantine, viz.: cotton, flax, and hemp.

All articles not falling within the two first classes belong to the third class, and as such are exempt from quarantine.

With a foul bill of health marked with the plague, cargo of the first class shall always be discharged at the lazaret, and purified cargo of the second class may be either immediately admitted to pratique or discharged at the lazaret, in order to be purified, according to circumstances, and according to the special sanitary regulations of each of the contracting countries.

Cargo of the third class being declared free, may be delivered immediately to its consignees under the supervision of the health authorities.[1]

The charterer of a ship, who covenants to send a cargo alongside at a foreign port, is not excused from sending it alongside, though, in consequence of the prevalence of an infectious disorder at the port, all public intercourse is prohibited by the law at the port, and though he could not have communication without danger of contracting and communicating the disorder.[2]

The Italian vessel "Ernesto Parodi" arrived at Havre with a cargo of Campeachy wood and coffee consigned to P. and Co., and was ordered to perform quarantine at Cherbourg, where her cargo was discharged for the ship to be disinfected. The costs amounted to 5,616 *fs.*, and the master claimed ten-twelfths of the sum from the consignees of the merchandise. The Tribunal at Havre, in delivering judgment, said, "By the regulations the quarantine ordered comprised the sanitary discharge of the ship: that is to say, the disinfection of the ship and cargo according to the nature of the merchandise. It follows that when the merchandise is exempt from disinfection, the discharging and reloading must be considered as only done in order to disinfect the ship. The regulations divide the different merchan-

[1] Baker on Quarantine.

[2] Barker *v.* Hodgson, 3 M. & S. 267.

dise into three classes: the first consisting of articles considered susceptible, and subject to compulsory disinfection; the second, goods less liable, and for which the disinfection is optional; thirdly, goods not susceptible and exempt from disinfection. The cargo of the 'Ernesto Parodi' consisted almost wholly of Campeachy wood, besides which there were only 300 bags of coffee and nine bales of cotton. The wood, which belongs to the third class, was exempt from disinfection. Coffee, which is not included in any of the classes, may belong to either according to the packing, and in the present case belongs to the second, which comprises cotton, flax, and hemp, the disinfection of which is optional. The coffee and cotton might therefore have been subject to the measures of disinfection under the general powers given to the authorities to apply such a measure, if considered necessary; but to render the cargo liable, it must be shown that such a measure was ordered and executed. The instructions of the quarantine master at Cherbourg, ordering the disinfection of the ship, did not imply that the merchandise underwent the same operation, and that if he ordered chloride of lime to be thrown on the cargo when the hatches were opened, and on each layer of the merchandise by degrees as it was removed, it was to purify the air in the hold for the safety of the labourers employed in discharging the ship. Therefore, as the merchandise was not a cause of the outlay incurred by the quarantine which

was ordered for the disinfection of the ship alone, the ship must alone bear the cost."

General Average.

"All loss which arises in consequence of extraordinary sacrifices made, or expenses incurred, for the preservation of the ship and cargo, comes within general average, and must be borne proportionably by all who are interested."[1]

General average was thus defined in 1801 by Mr. Justice Lawrence, and his definition has ever since been adopted.

Lord Kingsdown, giving the judgment of the Judicial Committee of the Privy Council in the case of the "Galam,"[2] says of general average, "It is a loss incurred for the general benefit of the ship and cargo, to which those who have received the benefit are by law liable to contribute rateably."

If the danger is common and the thing is voluntarily sacrificed, it must be contributed for rateably.[3]

Particular Average.

A particular average loss differs from a general average loss, both as to its cause and the mode of its compensation.

All casual damage, proximately caused by the perils insured against, as distinct from damage purposely submitted to, or effected by, the agency and will of man; and all extraordinary expenses (not falling within the head of wear and tear, &c.,) which are incurred for the sake of the ship alone, or the cargo

[1] Birkley v. Presgrave, 1 East. Rep. 228.

[2] 33 L. J. Adm. 102.

[3] Johnson v. Chapman, 35 L. J. C. P. 23.

alone, as distinct from those incurred for the joint benefit of both, are particular average losses.

Hence the definition of a particular average loss: that it is loss arising from damage accidentally and proximately caused by the perils insured against, or from extraordinary expenditures necessarily incurred for the sole benefit of some particular interest, as of the ship alone, or the cargo alone.[1]

Place and time of adjustment.

It has been laid down in Simonds *v.* White,[2] "that there was one point upon which the laws of all maritime states were agreed, namely, that the place at which a general average should be adjusted was the place of the ship's destination or delivery of the cargo. All agreed likewise in holding that the master was not compellable to part with the possession of the goods, until the sum contributable for them should be either paid or secured to his satisfaction."

The adjustment of a general average at the port of discharge, according to the law prevailing there, is binding upon the shipowner and the merchant, as they must be taken to have assented to adjustment being made at the usual and proper place, and, as a consequence, according to the law of that place.[3]

This rule only applies where the voyage is completed by the ship arriving with her cargo at the port of destination.

[1] Arnould on M. I., vol. 2., p. 970.
[2] 2 B. & C. 805.
[3] Lloyd *v.* Guibert, Law R. 1 Q. B. 126.

If, owing to sea peril, the voyage is broken up, and the ship and cargo part company at some intermediate point, a different rule is applicable.

Bovill, C. J., in giving judgment in the case of Alexander *v.* Fletcher,[1] said, that although in general the port of destination was the proper place for adjusting a general average, yet, when the voyage was broken up, and the adventure brought to an end at some other place, the average should be adjusted there, and by the law which there prevailed.

On the other branches of this subject which have not been authoritatively settled, Mr. Lowndes says, "When a ship is wrecked, or condemned at a port of refuge, and the cargo is sent forward in another vessel to its port of destination, it is conceived that the proper time and place for adjustment is the delivery of the cargo at the port of destination.

Secondly, the cargo may be forwarded by the master under his power of agency for the owner of the cargo, at a rate of freight exceeding that by the original contract. In such a case, the cargo is forwarded at the expense of the merchant. Here, as the shipowner has the right to put in force his lien on the cargo for general average, at once, at the place where the ship is wrecked, it is at this time and place, therefore, that the cargo becomes liable for general average. The amount of its liability must consequently be determined by the state of facts which then exists. It does not follow, however, that the law of that place

[1] Law R. 3 C. P. 375.

is that which ought to govern the adjustment. The law of the place where the claim is made is that which, it would seem, should determine the amount.

Thirdly, where the cargo is forwarded to its destination by or on behalf of the merchant, and without retention of the shipowner's right of lien. Here, as the forwarding is in no sense done for the benefit of the shipowner, and so far as regards him, the voyage is absolutely broken up at the place of wreck; this being so, the place of the wreck, at any rate if it is the port of loading, is the proper place of adjustment. An adjustment correctly made at that place, according to the law there in force, and based on the state of facts and values at the time of the wreck, might be enforced by the shipowner before parting with the cargo.[1]

Where a bill of lading, by which the shipowner undertook to deliver the goods at a port to a railway company, to be by them carried inland and delivered to the consignees, contained an exception, "that the shipowner or railway company are not to be liable for any damage to any goods which is capable of being covered by insurance, or for any claim, notice of which is not given before the removal of the goods." On the voyage a fire broke out, and the cargo was damaged by the admission of water to extinguish the fire. The ship put back, and the shipowners delivered the cargo up without taking security from any of the cargo owners, or taking any

[1] Lowndes on G. A. 164.

step for procuring an adjustment of general average. It was held, that the shipowners were not exempted from contribution to general average by the clauses in the bill of lading; and also, that they were liable to an action by a shipper of goods for neglecting to take the necessary steps for procuring an adjustment of the general average, and securing its payment: Lush, J., observing "The exceptions relied upon by the defendants in the bill of lading must be construed to have reference to, and to qualify their liability as carriers. The office of the bill of lading is to provide for the rights and liabilities of the parties in reference to the contract to carry, and is not concerned with liabilities to contribution in general average, and unless the contrary appears, the words used must be so construed. The argument receives additional force in the present case from the fact that, in the clause in question, the carriage on board the ship and the carriage by railway, are linked together. Goods may be damaged in their transit in ship or on the railway, but general average contribution can only arise in respect of damage on ship. Is a shipowner bound to exercise the power he is invested with when a general average loss has arisen, and to afford the means in his power for adjusting the average claims and liabilities, and secure their payment to the parties entitled? It seems strange that such a point has not been formally decided in this country. It has been decided in America, and in favour of the shippers. I am not aware that it

has ever been judicially questioned here; and I can only account for the absence of direct authority by supposing that the universal practice has been accepted as proof of the obligation. It is clear that the shipowner has a lien for general average on the whole of the cargo liable to contribution, and can require, before he parts with it, security for its due payment. In early times the master, when he had jettisoned part of the cargo to save the whole adventure, took and rendered contribution in kind. The ordinary course now is, and has been for a very long time, for the shipowner to require, before he delivers the cargo, an average bond or agreement for the payment of what shall be found due from each shipper for his proportion of the loss. He is the only person who has the power to require security. The right to detain for average contribution is derived from the civil law, which also imposes on the master of the ship the duty of having the contribution settled, and of collecting the amount; and the usage has always been substantially in accordance with this law, and has become part of the common law of the land. I am therefore of opinion, that the bill of lading does not exempt the shipowner from contribution to a general average loss; and, secondly, that he is liable to this action, for not having taken the necessary steps for procuring an adjustment of the general average, and securing its payment."[1]

[1] Crookes and another *v.* Allen & the Montreal Ocean Steamship Co., 49 L. J. Q. B. 201.

In 1864 a set of rules was drawn up at York dealing with the principal points of difference amongst the several systems of law on general average, but, owing principally to the indifference or hostility of Lloyds to the undertaking, practically nothing further was done until 1876, when the subject was taken up afresh by the "Society for the Reform and Codification of the Law of Nations," and a Conference was held at Bremen, which was followed in 1877 by a Conference at Antwerp, which was largely attended, and presided over by Lord O'Hagan. The whole subject of general average was opened out, and it was found, in the opinion of an overwhelming majority of those present, that there was little or nothing that could with advantage be added to, or altered in, the York Rules. The alterations finally made in these rules were so slight, that it was resolved, as the simplest way of indicating this fact, to give to the new rules the title of "The York and Antwerp (or York-Antwerp) Rules."

"Average to be adjusted according to the York-Antwerp rules."

From a report of the English Central Committee on International General Average submitted at a meeting of the Conference of the Association for the Reform and Codification of the Law of Nations, held at the Guildhall, it appeared that the undertaking to establish an uniform International Law of General Average, had, during 1878 and 1879, made considerable progress. In compliance with circulars sent to the several associations of steam and sailing-shipowners, Chambers of Commerce, and

underwriting associations throughout the United Kingdom, those bodies sent representatives to a conference held in London, on the 30th May 1878. At this conference a series of resolutions were passed, approving of the York-Antwerp Rules, recommending the insertion of a clause in bills of lading, charter-parties, and policies of insurance, whereby those rules should, by voluntary compact, become the basis of the settlement, and the 1st of January 1879 was fixed as the date for beginning to use the altered form of contracts; and a declaration was subsequently signed by steam and sailing-shipowners, companies or firms, representing more than two-fifths of the entire registered tonnage of Great Britain, approving of the rules, and of their intention to insert the clause above referred to in their bills of lading and charter-parties. The report showed that in Norway and Sweden the York-Antwerp Rules had been agreed to by an overwhelming majority of the ship and steam-ship owners, and also by the Marine Insurance Clubs and Companies. The Danish ship and steam-shipowners and marine insurance companies had adopted a resolution approving the rules, whenever their use did not collide with pre-existing rights. The German Committee had reported favourable progress; an Imperial Commission had approved of them. The ship and steam-shipowners of Bremen had unanimously voted their adoption; and the concurrence of the Hamburg, Altona and Stettin shipowners and marine insurance companies had to a

great extent been secured. In the Netherlands the adoption of the rule had also been secured, and in Belgium the Société Commercial et Industrielle had voted their adoption and a recommendation of their insertion in contracts of affreightment. The marine insurance companies of Russia, Austro-Hungary, and some of the French and great Swiss insurance companies, had agreed to recognize the York-Antwerp Rules in settlements of general average losses. In France and Italy some shipowners had evinced a spirit of opposition, but the Chamber of Commerce of Lyons had sent in its unqualified approval of the rules. As regards the British Colonies, those of British North America had to a great extent approved and adopted the rules. In our East India possessions foreign-going vessels are all but exclusively in the hands of British shipowners. The leading insurance companies of the United States of America had also agreed to recognize the rules. A favourable feature in the course of the progress made towards the universal adoption of these rules, was the fact that without public announcement, or subscribing to any declaratory document of assent, the ship and steam-shipowners and merchants in different countries were inserting them in their contracts of affreightment.

There can be no doubt that the York-Antwerp Rules constitute a step only towards an international law. There should be an international code dealing with the whole matter. Nevertheless it by

no means appears clear that it would be judicious, at the present stage, to proceed forthwith to draw up such a code. It would be better first to consolidate and extend the adoption of the York-Antwerp Rules as they stand.

RULE I.—JETTISON OF DECK CARGO.

York-Antwerp Rules.

No jettison of deck cargo shall be made good as general average.

Every structure not built in with the frame of the vessel shall be considered to be a part of the deck of the vessel.

RULE II.—DAMAGE BY JETTISON.

Damage done to goods or merchandise by water, which unavoidably goes down a ship's hatches opened, or other opening made, for the purpose of making a jettison, shall be made good as general average, in case the loss by jettison is so made good.

Damage done by breakage and chafing, or otherwise from derangement of stowage, consequent upon a jettison, shall be made good as general average, in case the loss by jettison is so made good.

RULE III.—EXTINGUISHING FIRE ON SHIPBOARD.

Damage done to a ship and cargo, or either of them by water, or otherwise, in extinguishing a fire on board the ship, shall be general average; except that no compensation be made for damage done by water to packages which have been on fire.

RULE IV.—CUTTING AWAY WRECK.

Loss or damage caused by cutting away the wreck

or remains of spars, or of other things which have previously been carried away by sea-peril, shall not be made good as general average.

Rule V.—Voluntary Stranding.

When a ship is intentionally run on shore because she is sinking, or driving on shore, or rocks, no damage caused to the ship, the cargo and the freight, or any or either of them, by such intentional running on shore, shall be made good as general average.

Rule VI.—Carrying press of Sail.

Damage occasioned to a ship or cargo by carrying a press of sail, shall not be made good as general average.

Rule VII.—Port of Refuge Expenses.

When a ship shall have entered a port of refuge under such circumstances that the expenses of entering the port are admissible as general average, and when she shall have sailed thence with her original cargo, or a part of it, the corresponding expenses of leaving such port shall likewise be admitted as general average; and whenever the cost of discharging cargo at such port is admissible as general average, the cost of re-loading and stowing such cargo on board the said ship, together with all storage charges on such cargo, shall likewise be so admitted.

Rule VIII.—Wages and Maintenance of Crew in Port of Refuge.

When a ship shall have entered a port of refuge under the circumstances defined in Rule VII., the wages and cost of maintenance of the master and mariners, from the time of entering such port until the ship shall have been made ready to proceed upon her voyage, shall be made good as general average.

Rule IX.—Damage to Cargo in Discharging.

Damage done to cargo by discharging it at a port of refuge shall not be admissible as general average in case such cargo shall have been discharged at the place, and in the manner customary at that port with ships not in distress.

Rule X.—Contributory Values.

The contribution to a general average shall be made upon the actual values of the property at the termination of the adventure, to which shall be added the amount made good as general average for property sacrificed; deduction being made from the shipowner's freight and passage money at risk, of such port-charges and crew's wages as would not have been incurred had the ship and cargo been totally lost at the date of the general average act or sacrifice; deduction being also made from the value of the property of all charges incurred in respect thereof subsequently to the arising of the claim to general average.

RULE XI.—LOSS OF FREIGHT.

In every case in which a sacrifice of cargo is made good as general average, the loss of freight (if any), which is caused by such loss of cargo, shall likewise be so made good.

RULE XII.—AMOUNT TO BE MADE GOOD FOR CARGO.

The value to be allowed for goods sacrificed shall be that value which the owner would have received if such goods had not been sacrificed.

In the report of the majority of a special committee appointed by the New York Chamber of Commerce to consider and report in reference to the adoption of the York-Antwerp Rules, it was remarked :—

" These Rules, twelve in number, cover and apply to but a small proportion of the rules required to be settled in order to establish uniformity." It may be stated that not one-third of the questions which arise in the adjustment of average losses are covered by the proposed rules; so that even if universally adopted, there would still exist almost as great a difference in practice as now prevails, and many cases would arise where, for a portion of the items, the adjuster would be compelled to adhere to these rules; and, as to others, claim that the American law governed. At least a doubt may be suggested whether this latter application of American law really follows as a matter of course; and whether items not embraced in these rules would not be

thereby rejected altogether from general average. The general average having to be settled according to York-Antwerp Rules, if the claimed items are not embraced in such rules, then it would seem to follow logically that they could not be deemed general average at all. At least the doubt is unquestioned, and litigation only could settle the question.

The following occurs in the report of the minority of the Special Committee appointed by the New York Chamber of Commerce :—

"The mode that has been recommended for bringing these rules into operation is the insertion in bills of lading and charter-parties of the following clause : 'General average, if any, payable according to York and Antwerp Rules.' As it has been thought by some that this might be construed to limit general average to such cases as are provided for by these twelve rules, it may be well, in order to allay any such apprehensions—whether well-founded or not—to add to the clause the words 'so far as applicable.'"

It would thus appear that the authors of the abovenamed reports are certainly of opinion that the York-Antwerp Rules do not provide for all cases of general average, and they also express a doubt as to whether the clause to pay general average according to York-Antwerp Rules, may not be construed to limit claims for general average to such cases only as are provided for by these rules.

Lien. That the shipowner, and the master, as his agent, have a lien on the goods carried in their ship for the

freight, is a proposition which appears never to have been disputed.[1]

The lien of the owners is as perfect for the hire of the vessel stipulated in the charter-party, as it is for the freight stipulated in the bill of lading. In both cases the claim is privileged in the same degree and to the same extent.[2]

As long as the goods remain in the possession of the master, the shipowners, and their agent, the master, has a lien on them at common law, not only for freight due, but also for general average, and this lien is given to the master without any provision for it being made either in the bill of lading or otherwise, and they cannot be compelled to part with the goods until such freight be paid.[3]

The essential foundation of the right of lien is possession. The right of retaining possession of the cargo until the freight of the ship was discharged, appears to have been allowed to the master by most of the maritime codes of Europe, and according to the principle by which all liens by the common law are regulated, if the master once voluntarily part with the possession of the goods out of his own or his agent's hands, he loses his lien upon them, and cannot afterwards reclaim them.[4]

The captain or master may, it is true, exercise, as

[1] Parsons on Sh., vol. 1, p. 174 n. 2.

[2] *Ibid.*, 175.

[3] The cargo ex Galam, 33 L. J. Adm. 97; Sodergren *v.* Flight, 6 East. Rep. 622; Kirchner *v.* Venus, 7 W. R. 456.

[4] Cross on Lien, pp. 4, 288, 289.

agent and on behalf of the owner, a right of lien upon the merchandise and cargo consigned by his ship, for the carriage in respect thereof; for the owner's rights are, as regards the carriage, co-extensive with that of a common carrier, and any part may be detained for the freight of all that is consigned to the same person, even though some part may have been previously removed into a lighter alongside a ship which has been sent by the consignee, but which the master has fastened to the ship's side to prevent its final removal.[1] Such right, however, extends to the charges for freight only, and not to those for wharfage.[2] Nor does it exist except in those cases where the master of the vessel has a power to receive the freight. He has no prospective lien thereupon, so as to insist upon payment to himself instead of to the owner; although a payment to him in the absence of any notice by the owner to the charterer to withhold it, will be a good and valid payment.[3]

In England, if goods are placed in the West India or East India Company's Dock warehouses, the ship master may give notice to those bodies to detain them until the freight be paid.[4]

Section 68, 25 and 26 Vict., c. 63, provides that,

[1] Ward *v.* Felton, 1 East. Rep. 507; Sodergren *v.* Flight, cited in Hanson *v.* Meyer, 6 East. Rep. 622; Ang. on Car., s. 370.

[2] Bishop *v.* Ware, 3 Camp. 360.

[3] Atkinson *v.* Cotesworth, 3 B. & C. 649.

[4] Faith *v.* The East India Co., 4 B. & Ald. 630; Horncastle *v.* Farran, 3 B. & Ald. 497.

"if the shipowner gives to the warehouse owner notice in writing that the goods are to remain subject to a lien for freight or other charges payable to the shipowner to an amount to be mentioned in such notice, the goods so landed shall, in the hands of the warehouse owner, continue liable to the same lien, if any, for such charges as they were subject to before the landing thereof"; and under this section it has been held, that a master who wilfully inserts in a notice a sum in excess of that for which he has a lien, is guilty of a wrongful detention of goods, and is liable in an action for a breach of duty.[1]

In bags of linseed,[2] the Court held that the lien of a vessel for freight depends upon possession, and is lost by delivery; but this important qualification of the rule is stated: "It is frequently understood between the parties, that transferring the goods from the ship to the warehouses shall not be regarded as a waiver of the lien, and that the shipowner reserves the right to proceed *in rem* to enforce it, if the freight is not paid; and if it appears by the evidence that such an understanding did exist between the parties, before or at the time the cargo was placed in the hands of the consignee, or if such an understanding is plainly to be inferred from the established local usage of the port, a court of Admiralty will regard the transaction as a deposit of the goods, for the time, in the warehouse, and not as

[1] Wilhelm Miedbrodt *v.* James FitzSimon, 44 L. J. Adm. 25.
[2] Black, 108.

an absolute delivery; and on that ground will consider the shipowner as still constructively in possession, so far as to preserve his lien and his remedy *in rem*."[1]

Where goods are not required to be landed at any particular dock, and the common practice is to land them at a public wharf, and direct the wharfinger not to part with them until the charges upon them are paid, in such case the wharfinger becomes the shipmaster's agent, and the goods remain constructively in the possession of the latter.[2]

Wher ea ship is chartered, but the shipowner and master are still legally in possession of it, they have a lien against the charterer, and all persons claiming through him, on all goods shipped by the charterer for the sum which is to be paid for the hire of the ship; such possession is necessary, for a person who has not in law the possession of the goods, cannot have a lien on them[3] unless such right has been reserved by express agreement in the bill of lading or otherwise.[4]

If the ship is disabled, or the voyage is abandoned by the master without transhipping the goods as agent of the shipowner, or forwarding the same to their destination, freight not having been earned, there will be no lien on the goods.

[1] Ang. on Car., note to sec. 370.

[2] Ang. on Car., sec. 372.

[3] Saville *v.* Campion, 2 B. & Ald. 503; Tate *v.* Meek, 8 Taunt. 280.

[4] Small *v.* Moates, 9 Bing. 574; Faith *v.* East India Co., 4 B. & Ald. 630.

A sum of money payable in advance, though described in the bill of lading as freight, does not acquire its legal character, nor do its legal incidents attach to it, nor has the master any lien on the goods for such sum.[1]

Neither can any lien be claimed if the shipowner stipulates that the freight shall not be paid until after the delivery of the cargo.[2]

If the goods, even of the same owner, are sent in the same ship, under different contracts to carry, with a different terminus in each, no lien attaches for freight under one contract upon goods shipped under the other.[3]

Where a master, in order to preserve cargo, takes measures such as a wise and prudent man would think most conducive to the benefit of all concerned, he has a lien on the cargo for the expenses so incurred.[4]

In the absence of express agreement, the shipowner and master have no lien on the goods for demurrage,[5] or for wharfage,[6] or for pilotage or port charges,[7] or for unliquidated damages for short loading, which have been contracted for in the charter-party, under

[1] Kirchner *v.* Venus, 12 Moo. P. C. C. 361; 7 W. R. 456; How *v.* Kirchner, 11 Moo. P. C. C. 21; 6 W. R. 139; Blakey *v.* Dixon, 2 B. & P. 321.

[2] Foster *v.* Colby, 28 L. J. Ex. 81.

[3] Ang. on Car., s. 373.

[4] The cargo ex Argos, 42 L. J. Adm. 49.

[5] Phillips *v.* Rodie, 15 East. Rep. 547; Gray *v.* Carr, Law R. 6 Q. B. 537; 40 L. J. Q. B. 257.

[6] Bishop *v.* Ware, 3 Camp. 360.

[7] Faith *v.* East India Co., 4 B. & Ald. 630.

the term dead freight[1]; or for unliquidated damages in respect of breaches of covenants contained in the charter-party[2]; and no special lien can be claimed by usage, unless both parties to the agreement were cognizant of the usage when the agreement was entered into.[3]

Even if the charter-party gives to the shipowner a lien on each part of the cargo for the whole freight, or a lien on the goods with regard to the alleged dead freight, demurrage, and damage in the nature of demurrage, such an obligation cannot be imposed upon the owners and consignees of the goods under the bill of lading, unless such liability be clearly imposed by plain words in the bill of lading.[4]

Bill of lading to be given up before delivery of the cargo is granted.

The master, when he signs the bill of lading, binds himself to deliver the goods to the holder of that document. As a general rule, a master is not bound to unload except on production of the bill of lading, for if the goods should get into the possession of a third person, who should refuse to deliver them up, the master would be responsible. Therefore, if the bill of lading is not forthcoming, the master is, in general, justified in refusing to deliver up the goods, because the holder of the bill of lading may come forward and say that he is entitled, and

[1] Gray *v.* Carr, Law R. 6 Q. B. 523; McLean *v.* Fleming, Law R. 2 H. L. 128.

[2] Faith *v.* East India Co., 4 B. & Ald. 630; Ang. on Car., s. 383.

[3] Kirchner *v.* Venus, 12 Moo. P. C. C. 361; 6 W. R. 456.

[4] Smith *v.* Sieveking, 24 L. J. Q. B. 257; s. c. 4 El. & Bl. 945; 5 El. & Bl. 589.

consequently the master has a right to say, "I am not bound to unload unless I am secure from the claim of the holder of the bill of lading."[1]

Where the defendants chartered a vessel of the plaintiff's, and thirty-five running days were to be allowed for landing and discharging, and ten days more on demurrage, at £5 a day. The defendant's factors abroad, under a contract, put a cargo on board, and the master signed bills of lading making the goods deliverable to order or assigns, he or they paying freight as per charter-party. The defendants refused to accept a bill of exchange for the price of the goods, on the ground that the goods were not according to contract, and the factor's agents, in consequence, retained the bill of lading. When the vessel arrived, eight lay days remained for the discharge. The defendants informed the master of the dispute respecting the cargo, and stated that to prevent delay of the ship, they were ready to receive the cargo for whom it might concern. The factor's agent gave the master notice not to deliver the cargo, except on the production of the bill of lading, stating that it would not be produced until they received advices from abroad, and suggested the discharge of the cargo at some respectable house other than the defendant's. On the last of the demurrage days, the factor's agents produced the bill of lading and received the cargo, which took seven days to

[1] The cargo ex Argos, 42 L. J. Adm. 49; Erichsen v. Barkworth, 28 L. J. Ex. 95; 3 Hurl. & N. 601, 894; 5 Jur. N. S. 51.

deliver. Held, that there was nothing in this case to interfere with the ordinary right of the master to refuse to deliver the goods without the production of the bill of lading, and the defendants were liable for the detention of the ship during the demurrage days, and for the few days beyond them that it took to unload.[1]

If, after the master has signed a bill of lading for goods, he ventures to deliver them, without receiving the bill of lading from the proper holder or indorsee of the same, according to its tenor, or an indemnity, he may become answerable for the cargo to a *bona fide* holder of the bill of lading for value.[2]

The general rule applicable to carriers and other persons contracting to deliver goods, is that a personal delivery is necessary. But this rule does not apply to the case of ships: the usages of trade having constituted a delivery on the wharf with notice to the consignee sufficient. The delivery must be on a wharf which is suitable for the cargo which is to be placed upon it; if, then, the goods are injured in consequence of the insufficiency of the wharf, the vessel is liable as if no delivery had taken place.[3]

But the master has no right to land the goods at a wharf if the consignee is ready and willing to accept

[1] Erichsen *v.* Barkworth, 28 L. J. Ex. 95.

[2] Nathan *v.* Giles, 5 Taunt. 558.

[3] Hyde *v.* Trent and Mersey Nav. Co., 5 T. R. 389; Parsons on Sh., vol. I., 222.

delivery according to the terms of the bill of lading, and requests the master to deliver to himself, and not to land the goods at a wharf, although the vessel be moored against it. The master will be liable to an action if, under such circumstances, he land the goods on the wharf.[1]

One bill being executed, others void.

The bill of lading remains in force so long as complete delivery and possession have not been given to some person having the right to claim it.

As the *bona fide* parting with the bill of lading, while the goods are at sea, be it one bill out of a set of three, or be it one bill alone, is a parting with the ownership of the goods, it follows, that it is the duty of the master to deliver the goods to the *bona fide* transferree and the holder of the first bill of lading,[2] under a proper indorsement of the bill of lading,[3] in accordance with the terms of the bill of lading, on payment of the freight and of any other charges which the master is entitled to make.[4]

But it may happen that the consignor of the goods, for which the master has signed bills of lading, has indorsed one bill of lading to one person, and another bill of lading of the same goods to another person.

This did happen in one reported case,[5] where the

[1] Syeds *v.* Hay, 4 T. R. 260.

[2] Barber *v.* Meyerstein, Law R. 4 H. L. 325.

[3] Kay on Sh., vol. I., 344.

[4] *Ibid.*

[5] Fearon *v.* Bowers, 1 H. Blkst. 364; cited in Lickbarrow *v.* Mason, 1 Sm. L. C. 5 edit. 705.

consignor indorsed one of the bills of lading to the vendee of the goods, and another to his own partner, with instructions to present it in case the vendee was not solvent. On the arrival of the vessel, the consignor's partner presented his bill of lading, and at the same time an indorsee for value of the other bill of lading presented his bill. The master delivered the cargo to the consignor's partner, and it was held, that he was justified in doing so, as the master is only bound, when both bills are presented at the same time, to deliver the goods upon one of the bills of lading, and by the usage of trade, he is not bound to inquire into the comparative merits of claims under different bills of lading, but only to deliver the goods upon one of the bills of lading.

Therefore, where several bills of lading have been made out and forwarded to several consignees, it follows, that the master is justified in delivering the goods to the holder of the first bill of lading which is presented to him, if, at the time of such delivery, he had not received any notice of a prior dealing with the bill of lading.[1]

But, if the master had notice or knowledge, before he delivered, who was the first person, who for value had got the transfer of a bill of lading of the goods, it would be his duty to deliver them to such person, inasmuch as the property of the goods is in him,

[1] The Tigress, 32 L. J. Adm. 97; s. c. B. & L. 38; Barber *v.* Meyerstein, 36 L. J. C. P. 48; s. c. 39 L. J. C. P. 187; Greenway *v.* Fisher, 1 Car. & P. 192.

although his bill of lading may be only one of a set of three bills.[1]

It is only when the master has no notice of the first dealing with the bill of lading, that he is justified in delivering to the holder of either of the other after-acquired bills.[2]

In the case of conflicting claims, the master, before he parts with the goods, should take care to require an indemnity.

If, before the master has delivered the goods, the vendor claims to stop in transitu and to forbid the delivery, the master is not entitled to retain the custody of the goods until he ascertains who is entitled to the delivery, but he must deliver them to the vendor.[3]

The vendor exercises his right of stoppage in transitu at his own peril. It is the duty of the master to give effect to that right, by giving up the goods to the vendor, so soon as the master is satisfied that it is the vendor who claims the goods, unless, indeed, the master is aware of some legal defeasance of the vendor's claim. It is not necessary for the vendor to prove to the master that he (the vendor) has a right to stop the goods.[4]

The master may sometimes suffer from an innocent mistake, but he can always protect himself by

[1] Caldwell *v.* Ball, 1 T. R. 217.

[2] Barber *v.* Meyerstein, Law R. 4 H. L. 336.

[3] The Tigress, 32 L. J. Adm. 97.

[4] *Ibid.*

requiring an indemnity from the person to whom he delivers, or by filing an interpleader in Chancery, to try who is entitled to the delivery of the goods. This step it is his duty to take if he have any doubt.[1]

Where goods have been deposited by the master of a vessel with a wharf or warehouseman, under the provisions of 25 and 26 Vict., c. 63, sec. 68, with a stop for freight, the only authority conferred upon the wharf or warehouseman by the master is, to detain the goods until payment of the freight, and then to deliver them to the owner of the bill of lading. Upon the release of freight the interest and duty of the master ceases, and the wharf or warehouseman becomes either a simple agent for the holders of the bill of lading, or mere bailees of the parties who enter the goods with them, and they should in all cases where there is any doubt as to who is the proprietor of the goods—for instance, when the holder of the goods presents the bill of lading and demands delivery of the goods, either to require the first of the set of the bills of lading to be produced, or to take an indemnity; otherwise they may be liable to the *bona fide* holder of the first of the set for a conversion of the goods.

Thus, where the plaintiffs advanced a sum of money to C. and Co. upon the security of certain goods shipped for London, of which C. and Co. were the consignees and owners. A bill of lading representing the goods was indorsed and delivered to

[1] Kay on Sh., vol. 1, 346.

the plaintiffs by C. and Co. as collateral security for the goods. The bill, so indorsed and delivered, had been signed by the master of the ship in a set of three, each of which was marked "First," "Second," "Third," making the goods deliverable to "C. and Co., or their assigns." Freight was made payable in London, and the bills of lading contained the usual clause, "the one of which bills being accomplished, the rest to stand void." It was the "First" of the set which was transferred to the plaintiffs by C. and Co., and it was the only one which they ever indorsed. On the same day that the ship arrived in London, C. and Co. made entry of the goods on board which were consigned to them, and these goods were landed and placed in the custody of the defendants in their warehouses. The following day the master lodged with the defendants a notice, directing them to detain the cargo until the freight should be paid. Two days later, C. and Co. produced to the defendants the "Second" part of the set of three of the bills of lading of the goods in question, and the defendants then entered C. and Co. in their books as the proprietors of the goods. Subsequently, the stop for freight was removed, and the defendants delivered the goods to third parties under delivery orders signed by "C. and Co.," and lodged by them with the defendants. These orders and deliveries were made entirely without the knowledge of the plaintiffs. In an action by the plaintiffs against the defendants to recover the value of the goods represented by the bill

of lading, of which the plaintiffs were the *bona fide* indorsees and holders for value:—Held, that the plaintiffs were entitled to judgment on the ground that whatever the rights and obligations of the master of the ship might have been, so long as the goods were still in her hold, the only authority conferred upon the defendants by the master was to detain until payment of freight, and then to deliver to the holder of the bill of lading, and that, accordingly, upon the release of freight, the defendants became either agents for the holder of the bill of lading (in which case they were only authorized to deliver to the plaintiffs) or warehousemen, who, as such, had been guilty of a conversion in delivering the goods upon the order of C. and Co. to third parties, to sell or use for their own benefit.[1]

Right and true delivery.

A right and true delivery of goods, according to bills of lading in the common form, means in law a delivery of the entire number of chests or packages, without reference to the condition of their contents at the time of their being landed; damage thereto, although occasioned by the default and negligence of the master and crew, being no answer to a demand for freight, but only subject of a cross action for damages.[2]

[1] Glynn, Mills, Currie, & Co. *v.* The East & West India Dock Co., 49 L. J. Q. B. 303.

[2] Davidson *v.* Gwynne, 12 East. Rep. 381, 393; Shields *v.* Davis, 6 Taunt. 65; McLach. on Sh. 436.

Customary delivery.

Speaking of a delivery that would satisfy and exhaust the bill of lading, Willes, J., says, "There can be no complete delivery of goods until they are placed under the dominion and control of the person who is to receive them."[1] It is in this sense that delivery is used here. The manner of delivering the goods, and consequently the period at which the responsibility of the master and owners will cease, depends upon the custom of particular places, and the usage of particular trades.[2]

Delivering cargo is as much the duty of the shipowner and master as of the merchant; and consequently, if there is no stipulation respecting it in the charter-party, the law implies that each party shall use reasonable diligence in performing his part of the delivery at the port of discharge: the merchant is to be ready to receive in the usual manner, and the shipowner, by his master and crew, to deliver in the usual manner.[3] In such case there is no implied contract that the discharge of the cargo shall be performed in the time usually taken at the port.[4]

If the shipowner agrees to deliver at a named port, no part of the port being expressly named for discharging, there can be no doubt that under usual

[1] Meyerstein *v.* Barber, Law R. 2 C. P. 50.

[2] Gatliffe *v.* Bourne, 7 L. J. C. P. 172; Petrocochino *v.* Bott, 43 L. J. C. P. 214.

[3] Ford *v.* Cotesworth, Law R. 4 Q. B. 134; s. c. Law R. 5 Q. B. 545.

[4] *Ibid.*

circumstances, the ship ought to be brought to the place in the port, where cargo such as she carries is ordinarily discharged. But what is a compliance with the shipowner's contract to deliver in the named port, must always depend on, and vary with, the existing state of things in the port.[1]

Thus, where a cargo of pit-props was shipped to be unladen at Sunderland, "at the usual place of discharge, and according to the custom of the port"; on arriving at S., the vessel at once proceeded to the South Dock, and was being moored there, when the consignees' agent directed the master to remove her to the Gill Dock, which the master refused to do. Both docks were usual and customary places of discharge. Held, that the master was not bound to lie in the river waiting for instructions, and was justified in at once mooring in the South Dock, but that having received instructions to discharge his cargo in the Gill Dock, he was bound to obey them.[2]

The manner of delivering the goods, and consequently the period at which the responsibility of the master and owners will cease, depends upon the practice and custom usually observed in the port or place of delivery.[3]

The delivery of goods under a bill of lading, where such delivery is not expressly in accordance with the

[1] Cargo ex Argos, Law R. 5 P. C. 157.

[2] The Felix, 37 L. J. Adm. 48.

[3] Gatliffe v. Bourne, 4 Bing. N. C. 314; Syeds v. Hay, 4 T. R. 260; Kay on Sh., pp. 350, 351.

terms of the bill of lading, must be a delivery according to the practice and custom usually observed in the port and place of delivery. An issue raised upon an allegation of such a mode of delivery would accommodate itself to the facts of each particular case; and would let in every species of excuse from the strict and literal compliance with the precise terms of the bill of lading, which must necessarily be allowed to prevail with reference to the means and accommodation for landing goods at different places; the time of the arrival and departure of the vessel; the state of the tide and wind; interruptions from accidental causes; and all the other circumstances which belong to each particular port or place of delivery.[1]

In New York it has been held that landing goods at a proper time, and upon a proper pier, with notice to the owners, is equivalent to a delivery; after which the owners take all risks except those which proceed from the ship herself. Where the master of a vessel, under an ordinary bill of lading, on arrival at New York, proceeded to land the cargo on to a pier which was sufficient for it if the cargo had been properly discharged upon it, giving notice thereof to the consignee. After the goods were discharged, the ship employed a watchman to watch them on the pier, but at the expense of the consignees. While a part of the goods remained on the pier, the ship so overloaded it with other goods that it gave

[1] Gatliffe *v.* Bourne, 7 L. J. C. P. 172; Petrocochino *v.* Bott, 43 L. J. C. P. 217.

way, and these goods were thrown into the water and damaged. The master was held liable, as the damage was caused by his negligent act, and as that was done in the ordinary discharge of his duty as master, the ship was liable for the damage.[1]

The quantity to be delivered per diem depends, first, upon the terms of the agreement; secondly, in the absence of any stipulation as to output, upon the indisputable custom of the port; and thirdly, where no usage exists, upon reasonable dispatch. The rate of discharge should be such a reasonable quantity as might be discharged and received with ordinary diligence, and proper gear and vehicles. The custom of one port is not that of all others; in order to be binding, the custom must be reasonable and uniform.

The old customs which took their rise when vessels loaded or took in cargoes in rivers, retained their hold until a recent period, but the necessities of the steam-shipping trade and competition, appear to have completely set aside the usages of the early or first half of the present century. The system so long in force with respect to lay-days has been completely revolutionised by free trade and steam navigation between them; what might have been done in former years, will not suffice for the exigencies of the present day.

It is now the practice in the steam-shipping trades to pay for "dispatch," so essential is it that vessels should not be kept idle. "Dispatch money" is also

[1] Kennedy *v.* Dodge, 2 Asp. Mar. Law Ca. 565.

claimed by consignees, under special contracts, for all time saved under that allowed in the agreements for discharging. The shipowner and the merchants have thus separate reasons for giving the quickest possible dispatch.

Claims for damage must be made within a specified period.

The stipulation in a bill of lading, "That claims for short delivery, if any, as well as every and all other claim or claims whatsoever against the vessel, must be made within three months from the date of this bill of lading at the port of C. and at no other port; and no such claim or claims will be entertained or admitted, unless supported by certificates signed by the commander of the vessel before leaving the port of discharge," is a condition precedent to the institution of an action at the port of discharge, or elsewhere, for the recovery of damages for short delivery, or non-delivery, or for injury to the cargo. The stipulation makes it obligatory on the consignee, or those claiming under him, to prefer his claim, or, in other words, to make a demand at the port indicated in the clause for payment before he can maintain his action for damages.

Thus, where the bill of lading provided that the claim should be made at Calcutta, and an action was brought at Rangoon, which was the port of discharge, to recover damages for short delivery, but it appeared that no claim had been previously made at Calcutta, the suit was dismissed.[1]

[1] Mahomed Ismailjee *v.* B. I. S. N. Co. 9 Cal. W. Rep. C. R. 396; Ibrahim Moosum *v.* B. I. S. N. Co., 8 Cal. W. Rep. C. R. 35.

The clause as to the period within which the claim for any loss or damage is to be preferred varies in different bills of lading; in some it is provided as above, that "the claim must be made within three months of the date of the bill of lading"; in others "within one month after the delivery of any portion of the goods entered in the bill of lading," whilst some stipulate that "the claim must be made before the goods are removed."

The consideration of the legality and validity of this clause came before the courts for the first time in 1876, in the case of Moore *v.* Harris,[1] which was an appeal to the Privy Council from a judgment of the Court of Queen's Bench in Lower Canada, confirming a judgment of the Superior Court, in which the appellants were plaintiffs and the respondent was defendant.

The facts of this case were as follows: the appellants, who were merchants in Toronto, brought the action against the respondent, the owner of the steam-ship "Medway," one of a line of steamers between London and Montreal, for the value of the damage alleged to have been done to 306 packages of tea on the voyage from London to Montreal. By the bill of lading signed in London by the master's agent on the 12th of April 1870, the 306 packages were "to be delivered from the ship's deck, when the ship's responsibility shall cease, at the port of Montreal, unto the Grand Trunk Railway Company,

[1] 45 L. J. C. P. 55.

and by them to be forwarded thence, per railway, to the station nearest to Toronto, and at the aforesaid station delivered to Messrs. Charles Moore & Co. or to their assigns." The exception contained a long list of special risks, besides general perils of the sea, whether arising from negligence or otherwise. The instrument also contained the following condition, upon the last clause of which the material question arose :—

"No damage that can be insured against will be paid for, nor will any claim whatever be admitted unless made before the goods are removed." The case of the plaintiffs, as stated, was that during the voyage the tea "had become impregnated and affected with the odour and taste of chloride of lime and other injurious substances," and that the damage so occasioned was not within any of the exceptions of the bill of lading. The defence was, first, that the tea was not damaged on board the ship; and if it was, that in one way of accounting for it, the injury was within the excepted risks; and, secondly, that "the claim was barred by the delay which occurred in making it." The evidence for the plaintiffs was to the effect that, during the voyage, scarlet fever broke out among the steerage passengers, and under the advice of the surgeon, chloride of lime and carbolic acid were employed as disinfectants. That the chloride was thrown in large quantities about the fore cabin and other parts of the ship occupied by the passengers,

and carbolic acid sometimes used in the same places, appears to have been satisfactorily proved. The plaintiffs' packages, and packages of tea belonging to other consignees, were stowed in the hold under this cabin, and the passengers' trunks were in a place near them. The passengers, it was said, suffered greatly during the voyage from the smell of the disinfectants, and when their trunks were opened on shore, the clothes contained in them were found to be strongly impregnated with the same odour. The ship arrived at Montreal on the 2nd or 3rd of May, having sailed from London on the 14th of April. There were in all 4,000 or 5,000 packages of tea on board, dispersed in various parts of the ship. The plaintiffs' tea was landed with the others, and all were placed in shipping sheds, where they were sorted and then taken to the freight sheds of the Grand Trunk Railway Company. From thence they were carried by railway to Toronto, and deposited in the Railway Company's bonded warehouses there. After lying a day or two in these warehouses, the packages were carried in the Railway Company's waggons to the plaintiffs' own warehouse. The unloading of the ship occupied several days, and the plaintiffs' packages were forwarded in three lots.

These lots were removed from the shipping sheds to the railway freight sheds in Montreal on the 6th, 9th, and 12th of May, and were respectively delivered at the plaintiffs' warehouse in Toronto on the 13th,

16th, and 17th May. Much evidence was given as to the storing and transport of the packages after they left the ship, to exclude the supposition that they were damaged in their transit from the ship to the plaintiffs' warehouse. It appeared that upon the arrival of some of the packages at the plaintiffs' warehouse, their shipping clerk and foreman perceived a peculiar smell in them, and called the attention of the cartmen to it.

On the 18th May the plaintiffs called in four persons, viz., two grocers, a merchant, and a tea broker, to examine the tea, and obtained from them the following report: "We find the entire lot damaged and unmerchantable. The damage appears to have been caused by chloride of lime, or some other chemical. We find the packages impregnated with the odour, as also the contents." On the 27th of May another survey of the tea was held for the purpose of obtaining a return of duty, and the surveyors then called in, reported damage to the extent of ninety-nine per cent. No notice whatever of the damage or of these surveys was given to the captain or agent of the ship until the 30th of May, when the solicitors of the plaintiffs wrote to Mr. Shaw, the agent for the ship at Montreal, informing him that "the tea upon its arrival was found to have been spoiled and rendered almost worthless by reason of its having been improperly carried," and inviting him to be present at a survey of the tea proposed to be held on the 9th of June. To this letter, which was received on the 3rd

of June, no answer was returned. The survey, however, took place, and a report, in substance the same as that of the 18th of May, was made. Other evidence was given by the plaintiffs, but none as to the condition of the tea when shipped. The defendant called witnesses to rebut the presumption that the damage was done in the ship, and among them stevedores and others, who were present when the cargo was discharged, who said that, as far as they observed, the floors over the hold were tight and the packages undamaged.

Their Lordships were of opinion that there was a strong *prima facie* case that the damage was done in the ship, but their decision rested entirely on the express condition in the bill of lading. Sir Montague Smith, in delivering the judgment of the court, said: "It was not, and could not, be denied that this condition, stringent as it is, was binding on the consignees; but its application to the claim in question was disputed. It was contended that 'before the goods are removed,' meant removal from the ship at Montreal, and not from the railway station at Toronto; and that the condition applied only to apparent damage, and the injury sustained by the tea was not such damage. There is undoubtedly difficulty, owing to the ambiguous language and inconsistent provisions of the bill of lading, in determining whether the removal referred to was that from the ship or the railway station. The construction most consistent with the rest of the instrument seems

to point to the latter place. It was at the railway station that in express terms the goods were to be delivered to the plaintiffs, 'freight being payable by the consignees as per margin;' this freight being, as it was admitted, a through freight from London to Toronto. By another clause it is provided that 'goods must be taken away within twenty-four hours after arrival at the railway station to which they are destined.' Again, freight is made due if payable by consignees, 'on arrival at the place of destination.' On the other hand it was pointed out, that it is provided that the goods are to be delivered from the ship's deck, where the ship's responsibility shall cease, and this delivery is to be to the Railway Company; but, although the liability of the ship for the subsequent damage then ceases, it would be the duty of the ship to contract with the Railway Company to carry on the goods to Toronto, and, as already observed, the railway station is spoken of as the place of destination, and it is there the goods are to be delivered to the plaintiffs. The clause, 'The goods to be taken from alongside by the consignee immediately the vessel is ready to discharge, or otherwise they will be landed and stored at the expense of the consignee, and at his risk,' is, no doubt, opposed to the above construction, but this clause is inconsistent with the engagement of the shipowner to send on by railway at a through freight to Toronto. It is evidently one of the printed clauses, and cannot control the specific undertaking to forward the goods to Toronto."

For the plaintiff it was insisted that the condition referred to the removal from the ship, and that the condition should be confined to claims for apparent damage, since there was little opportunity for examination on a delivery from the ship's side, and that it would be unreasonable to suppose the parties intended it to apply to claims other than for such damage. Supposing, however, removal from the ship was meant, that construction would not, in their Lordships' view, materially assist the contention; for in that case the Railway Company would be the agents of the plaintiffs to receive the goods from the ship, and if the plaintiffs, who had come under this stringent condition, were not content to leave the examination of the packages to the officers of the company, they should have taken care to employ a competent agent for that purpose. There were shipping sheds on the wharf alongside the ship in which the packages on being landed were placed, and where the goods remained in charge of the agents of the ship, who sorted and afterwards delivered them to the Railway Company's servants. There is no reason for supposing that opportunity would not have been afforded in these sheds for inspecting and examining the packages. The principal contention on behalf of the plaintiffs was that, whichsoever was the place of removal referred to, the condition should be confined to apparent damage. Now, its language is plain, and without any ambiguity. The first branch of it, 'no damage that can be insured against will be paid for,'

although limited to insurable damage, clearly applies to such damage, whether apparent or latent. The words of the last branch are unlimited and universal, 'any claim whatever.' It was not, indeed, denied that these words would, in their natural sense, include all damage, but it was said they should be construed as the usual acknowledgment found in bills of lading, 'shipped in good condition' has been, and confined to external and patent damage. It is to be observed, however, that although the general understanding may have been so to limit the words of this acknowledgment, it is not an uncommon practice to qualify them by such expressions as 'weight, value, and contents unknown.' But in truth the supposed analogy does not exist. This is a condition for the shipowners' benefit, and it may well be, that stale claims for latent damage were those against which he most desired to guard."

"A shipowner may choose to say, I will not be liable for any damage to an article of this kind, unless a claim is made, so that it may be looked into and checked by my agents before the goods are removed from their control. And when a condition to this effect is found in a bill of lading, expressed in language, which, in its ordinary and natural sense includes all damage, whether latent or not, can the courts undertake to say it is so unreasonable that the parties could not have meant what they have said? No doubt this condition may bear hardly on consignees, but so also may the very large exceptions to the

responsibility of the shipowner inserted in the body of this bill of lading. Certainly, no reasons for narrowing the scope of the condition can be gathered from the general tenor of the instrument, which is manifestly framed throughout with a view to exempt the shipowner (as far as could be foreseen) from liability for damage. It may be that this has been done to an unreasonable extent, but the plaintiffs are merchants and men of business, and cannot be relieved from an improvident contract, if it really be improvident."

"Weight, quality, contents, and value unknown"

As already pointed out, a bill of lading is evidence against the master or owner of the ship, both of the reception of the goods described in it, and also of any material fact stated in the bill of lading respecting the quantity, the quality, the condition, or any other element in the description of the goods.

But where a person signs the bill of lading with this qualification, "weight, contents, and value unknown," he merely means to say that the weight is represented to him to be so much, and that he has himself no knowledge of the matter. The insertion of the weight in the margin, and the calculation of freight upon it, does not carry the matter any further.

Thus, where a bill of lading was signed for manganese, shipped in bulk and not weighed at the time of shipment, which described the manganese as of a certain weight, but contained in print the words "weight, contents, and value unknown." The whole

of the manganese shipped was, on arrival of the ship, delivered to the plaintiff, but was found to be short of the weight stated in the bill. In an action brought by the plaintiff to recover damages for non-delivery of the full weight, it was held, that the printed words controlled the statement of weight in the bill of lading.[1]

So where a bill of lading purported to be for 50 tons of coals, and contained a printed clause "weight, contents, and value unknown," and similar words written above the signature of the master, it was held this did not amount to an admission by the master that he had received 50 tons of coal on board.[2]

And where a master signed bills of lading for 701 tons of cattle bones, with the condition "weight and contents unknown," and on arrival at Aberdeen there were but 386 tons on board, being 210 tons short of what she could have carried. The holders of the bill of lading demanded delivery of the quantity specified therein; the captain, on the other hand, offered to deliver the actual cargo on board, which he said was all that he had got, but on condition of receiving real freight for the 386 tons, and dead freight for the 210 tons, and adduced evidence to show he had delivered all the bones he had received. The House of Lords held that "the bills of lading signed by the master were *prima facie* evidence that the quantities of bones mentioned in them had been received on

[1] Jessel *v.* Bath, Law R. 2 Ex. 267.

[2] W. Nicol & Co. *v.* J. S. Castle, 9 Bom. H. C. Rep. 321.

board," and that "though the master had no authority to sign bills of lading for a greater quantity of goods than is actually put on board, yet, as it is not to be presumed that he has exceeded his duty, his signature to the bills of lading is sufficient evidence of the truth of the contents to throw upon the shipowner the onus of falsifying them, and proving that he received a less quantity of goods to carry than is thus acknowledged by his agent. And the shipowner having satisfactorily rebutted this presumption by evidence, was held entitled to recover both his real and dead freight."[1]

Where a closed package was shipped at Boulogne for London, and in the bill of lading presented to the master for signature the goods were described as "linen" and the master asked no questions, but stamped on the bill the words "value, weight, and contents unknown," and signed it; on the arrival of the ship, it was found that the package had been tampered with, and two out of seven pieces of silk broad stuff, the real contents of the package, abstracted. On the matter coming before the Court of Common Pleas to enter a non-suit on the ground that there was no evidence of any contract to carry silk goods, and that the plaintiffs were estopped from showing a delivery to the defendants for carriage of silk goods, the Court held, that the contract was contained in the bill of lading, and that though the plaintiffs represented that the contents of the

[1] McLean v. Fleming, Law R. 2 H. L. 128.

package were linen goods, the defendants refused to contract on the footing that this was absolutely so. The effect of this was that it was no part of the contract that the package contained linen, and that the defendants were not bound to deliver linen goods, and in law and fact by the printed memorandum they expressly repudiated any contract as respected the nature of the contents of the package, and that the contract was to carry the package, whatever its contents might be. The declaration was shown to have been innocently made and without fraud, and the Court was inclined to think that if the question of damages had been raised, the plaintiff might not have been entitled to recover larger damages than if the goods were linen;[1] but this question not being before the Court, it was undetermined.[2]

In Clark *v.* Barnwell,[3] where the bill of lading contained the usual clause that the boxes containing the goods were shipped in good order, "contents unknown," the Court said, "It is obvious, therefore, that the acknowledgment of the master as to the condition of the cases when received on board, extended only to the external condition of the cases, excluding any implication as to the quantity and quality of the article, the condition of it at the time when received on board, or whether properly packed or not in boxes."

[1] Lebeau *v.* the Gen. S. N. Co., 42 L. J. C. P. 1.
[2] M'Cance *v.* The L. & N. W. Ry. Co., 34 L. J. Ex. 39.
[3] 12 How. 272.

The object of this memorandum is merely to protect the master against any mistake that might occur in the invoice quantity in the bill of lading, in case of alleged short delivery, or deterioration, not caused by his default. But the effect of the memorandum is not such as to strike out the invoice quantity from the bill of lading.

Thus, where a ship was chartered to carry a cargo of grain from *A.* to *B.* for a freight of 7*s.* "per imperial quarter delivered," and the charter-party provided that "in the event of the cargo, or any part thereof, being delivered in a damaged or heated condition, the freight shall be payable upon the invoice quantity taken on board, as per the bill of lading; or half-freight upon the damaged or heated portion at the captain's option." Under this charter-party 2,368 imperial quarters were shipped on board at *A*, and the master signed a bill of lading with the following words written at the foot, which was proved to be usual in the grain-carrying trade, "quantity and quality unknown." The ship experienced bad weather, and 80 quarters were damaged by heating. It was held, that the master was entitled to be paid freight as he claimed, on the invoice quantity taken on board, notwithstanding the words written at the foot of the bill.[1]

The memorandum in a bill of lading "not accountable for leakage," is not restricted as to the quantity of leakage, and protects the shipowners, in the ab-

[1] Tully *v.* Terry, Law R. 8 C. P. 684; s. c. 42 L. J. C. P. 240.

sence of proof that the leakage was occasioned by their negligence, from all loss arising from this cause.

Thus, where 47 casks of olive oil were shipped at Leghorn for Liverpool, and on arrival at Liverpool many of the casks were wholly or partially empty, causing a loss of 2,001 gallons out of about 4,888 gallons of the oil, and that the usual percentage of leakage was about one per cent. only. It was held, that the condition that the shipowners are not to be accountable for leakages, does not in its ordinary and grammatical sense put any limit to the quantity of leakage, and that the memorandum in the bill of lading protected the shipowner as to all leakage, except that caused by negligence.[1]

But where certain portions of the cargo, at the end of the voyage, were found to have been damaged by oil, and the bill of lading contained an exception against "breakage, leakage, and damage;" it was proved that there was no oil in the cargo, but that near where the goods were stowed, there were two donkey engines, which were lubricated with oil, and it was not shown how the injury occurred. In an action against the shipowners, it was held, that the exception did not protect them from liability for damage accruing from the negligence of their servants, but that it did shift the onus of proof, and that it was incumbent upon the plaintiffs to prove affirmatively the negligence of the defendants' servants.[2]

[1] The Helene, Law R. 1 P. C. 231.

[2] Czech v. The Gen. S. N. Co., Law R. 3 C. P. 14.

The condition "weight and contents unknown" can only be opposed to shippers when the packages are delivered in the same state as that in which they were received. It is without effect when the packages are not intact on delivery. For instance, if the fastenings of the bales of hides have been opened, and it appears that the bales on arrival contain a less number than when shipped, the clause will not protect the shipowner.

Where a bill of lading for a bale of cloth contained the words "weight and contents unknown," it was held, that the carrier was not called upon to prove the delivery of any certain number of pieces of cloth in the bale. But where the bale, when delivered from the ship, was seen to have its outer ropes removed, and its outer covering cut, and on its arrival at the store, it was found that its inner covering had been also cut, and a piece of cloth was missing, and no one of the employés of the ship who stowed the bale or broke it out was called as a witness: it was held, that it was incumbent on the carrier to show that the injury was only external.[1]

[1] The Energie, 2 Asp. Mar. Law Ca. 296.

PART III.

ON THE RIGHTS AND LIABILITIES OF CONSIGNORS, CONSIGNEES, ASSIGNEES, INDORSEES, AND VENDEES UNDER THE BILL OF LADING.

Effect of 18 and 19 Vict., c. 111.

BEFORE the Statute 18 and 19 Vict., c. 111, the transfer of a bill of lading did not, like that of a bill of exchange, confer any right on the assignee to sue upon the contract expressed thereby. The transfer of the bill of lading did no more than transfer the property in the goods. It did not transfer the contract.[1]

Upon refusal to deliver the goods when they arrived, the transferee of the bill of lading, even before the 18 and 19 Vict., c. 111, might sue the owners or the master for the wrongful conversion of the goods,[2] because the property in the goods was by the transfer of the bill of lading transferred to the

[1] Thompson *v.* Dominy, 14 M. & W. 403; s. c. 14 L. J. Ex. 320; Howard *v.* Shepherd, 9 C. B. 296; s. c. 19 L. J. C. P. 248; Sanders *v.* Vanzeller, 4 Q. B. 260; s. c. 12 L. J. Ex. 497; Tindall *v.* Taylor, 4 El. & Bl. 219; s. c. 24 L. J. Q. B. 12.

[2] Haille *v.* Smith, 1 B. & P. 564.

transferee; but, inasmuch as the contract contained in the bill of lading was not, before this Statute, transferred or transferable to the transferee, he could not maintain an action for a breach of the contract contained in the bill of lading: as, for instance, for not delivering the goods according to the contract, to which the transferee had not been a party.[1]

This continued to be the law until the Statute 18 and 19 Vict., c. 111, was passed.[2]

This Statute first recites the old law thus:—

"Whereas, by the custom of merchants, a bill of lading of goods, being transferable by indorsement, the property in the goods may thereby pass to the indorsee; but, nevertheless, all rights in respect of the contract contained in the bill of lading, continue in the original shipper or owner, and it is expedient that such rights should pass with the property:

Be it therefore enacted as follows:

"Every consignee of goods named in a bill of lading, and every indorsee of a bill of lading, to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or indorsement, shall have transferred to, and vested in him, all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself."

S. 2. "—Nothing herein contained shall prejudice

[1] Howard *v.* Shepherd, 19 L. J. C. P. 248; Thompson *v.* Dominy, 14 L. J. Ex. 320; Sanders *v.* Vanzeller, 12 L. J. Ex. 497.

[2] Kay on Sh., vol. 1., p. 400; 18 & 19. Vict., c. 111.

or affect any right of stoppage in transitu, or any right to claim freight against the original shipper or owner, or any liability of the consignee or indorsee by reason or in consequence of his being such consignee or indorsee, or of his receipt of the goods by reason or in consequence of such consignment or indorsement."

Original shipper's rights conferred to consignee by vesting of the property.

It has been held, that under the true construction of the statute, it was not the indorsement of the bill of lading, but the vesting of the property, which gave to the consignee of goods the rights of the original shipper, with respect to the contract contained in the bill of lading.[1]

To entitle the indorsee of a bill of lading to sue on the bill of lading by virtue of the 18 and 19 Vict., c. 111, the circumstances under which the bill of lading has been indorsed must be such that the property in the goods shall have passed to the indorsee by reason of the indorsement.[2]

In Fox *v.* Nott[3] it was held by Martin, B., that the words in the statute "to whom the property in the goods therein mentioned shall pass," meant an actual vesting of the property by bargain and sale.

If the property in the goods be not transferred, then the contract contained in the bill of lading is not transferred, either to the consignee of goods named in the bill, or to the indorsee of the bill.[4]

[1] The Felix, Law R. 2 Adm. 277.

[2] The Freedom, Law R. 3 P. C. 599.

[3] 6 Hurl. & N. 637; s. c. 30 L. J. Ex. 259.

[4] Fox *v.* Nott, 30 L. J. Ex. 259; Schuster *v.* McKellar, 26 L. J. Q. B. 281; The Felix, Law R. 2 Adm. 277.

But if the property in the goods named in a bill of lading is in the consignor, and if he, by consignment or by indorsement and delivery of a bill of lading, transfer to the consignee, or indorsee, the property in the goods, he does with it, by virtue of the Act, transfer also the contract and all his rights and liabilities under the bill of lading, except his liability for freight.[1]

When the indorsement does not transfer the property, the consignee continues liable for freight.

If there is no transfer of the property in the goods, the consignee cannot transfer his liability to pay freight except with the shipowner's or master's assent.

Thus, in one case, the consignee named in the bill of lading indorsed the bill before the arrival of the ship, in the words, "Deliver to W. and K. or order, looking to them for all freight, dead freight, and demurrage, without recourse to us." It was admitted, that the property in the goods had not passed to W. and K., and that the consignee would have been liable to them for any freight paid by them. It was held, that it was immaterial whether such indorsement was or was not on the bill of lading, unless the master saw it, and that the consignee having been, at the time of the alleged indorsement, liable for the freight, and the property not having been transferred, the consignee remained liable, unless he could prove that the shipowner or the master had agreed to discharge him from such liability, and that such agreement could not be proved by merely showing that

[1] The Felix, Law R. 2 Adm. 277; Shand *v.* Sanderson, 28 L. J. Ex. 278; Foster *v.* Colby. 28 L. J. Ex. 88.

the indorsement was on the bill when it was presented to the master, and when he delivered the cargo, without proving that the master in fact assented to it.[1]

All rights of a consignor may be passed by indorsement.

Since the passing of the above Act, if the property in the goods passes to the indorsee of a bill of lading by reason of such indorsement, all the rights of the consignor under the contract contained in the bill of lading may be passed by the indorsement, and if so passed, are enforceable by the indorsee so long as the bill of lading is in force;[2] but the consignor himself remains always liable for the freight, unless the shipowners or charterers, or their master, agree to discharge him from such liability.[3]

Intention of Statute.

The obvious meaning of the Statute is that the assignee of the bill of lading, to whom the property in the goods passes, shall have all the rights and bear all the liabilities of a contracting party, just as if the contract contained in the bill of lading had been made with such assignee, but that if he passes on the bill of lading by indorsement to another, he passes on to such indorsees also all the rights and all the liabilities which the bill of lading carries with it, and which he himself had.[4]

To render an indorsee liable, he must be the holder of the bill of lading.

In order that the consignee or indorsee should be

[1] Lewis *v.* M'Kee, Law R. 4 Ex. 58.

[2] Short *v.* Simpson, Law R. 1 C. P. 255; The Freedom, Law R. 3 P. C. 599.

[3] Smurthwaite *v.* Wilkins, 31 L. J. C. P. 215; Lewis *v.* M'Kee, Law R. 4 Ex. 58.

[4] Smurthwaite *v.* Wilkins, 31 L. J. C. P. 215; The Helene, B. & L. 415.

liable under this Act, he must be the holder of the bill of lading; but if he has assigned or indorsed the bill over, he is no longer liable upon the contract contained in the bill, but passes on to such third party all the rights and liabilities he himself had.

Therefore, after the indorsee of a bill of lading to whom the property in the goods has passed by reason of such indorsement, has passed it on by indorsement to another, before the delivery of the cargo, such indorsee does not remain liable for the freight.[1]

Thus, where goods were shipped under an ordinary bill of lading, which was assigned to the defendants, and by them assigned over before the arrival of the vessel and delivery of the goods. The contention was, that because the assignment of the bill of lading passed the property in the goods to the defendants, they were liable, under the Statute 18 and 19 Vict., c. 111, to pay freight, although they did not receive the goods. It was argued that section 1 of the Act meant that because the consignor remained always liable for freight, and the assignee of the bill of lading had transferred to him by the Statute the liability of the consignor, such assignee was to remain liable, although he had passed away the goods and bill of lading to a third party. Erle, J., said, "The party who receives the cargo is considered generally to be liable for the freight, but that is under an implied contract arising from the fact of his receiving the cargo, and not from the bill of lading. Now, I think

[1] Smurthwaite *v.* Wilkins, 31 L. J. C. P. 215.

the meaning of the Statute is, that the assignee of the bill of lading who receives the cargo shall have all the rights and liabilities of the contracting party: but that if he assigns the bill of lading before the arrival of the cargo, he parts with all such liabilities. The preamble of the Statute leads me to this conclusion; and the Statute enacts, in effect, that if the consignor assigns the bill of lading, the assignee shall take all the rights of the consignor. Then, where such assignee assigns over, does he still retain all the rights of the consignor? According to the construction contended for, he would have a right to the cargo, but that he clearly has not. It must therefore be contended that, although by the assignment he has passed all rights, he nevertheless has retained all liabilities: a doctrine very convenient to shipowners, but contrary to justice. The preamble to the Act points to its being expedient that the rights in respect of the contract should pass with the property, and the Act provides for the passing of the rights and liabilities in respect of the contract with the property: when, therefore, the assignee of the bill of lading passes the property, he passes not only the rights, but the liabilities also. It is said that because the assignee who takes the cargo under a bill of lading is liable for freight according to the terms of the bill of lading, that therefore the defendants are liable by a constructive taking of the goods. The origin of the liability at common law was a giving up of the lien on the cargo on an

undertaking by the party receiving the cargo to pay freight; but I never remember any such liability to pay freight being implied where the party did not actually receive the goods."[1]

Indorsement of bill of lading.

Bills of lading are transferable by indorsement, the same as ordinary bills of exchange; and it makes no difference whether the indorsement is to a particular person, or blank, or to the bearer; for the consignee or shipper may, as he thinks proper, fill up the name of any person to whom the goods are to be delivered, or attach any conditions to the indorsement; and acting in good faith, and according to the best of his judgment, the master is safe in making delivery to the holder who first produces the bill of lading, duly indorsed, unless he is satisfied that the circumstances are such as to justify a suspicion of such holder having come by the bill improperly, unfairly, or fraudulently.

Holder without notice not affected by conditions.

The holder or indorsee of a bill of lading for valuable consideration, is not affected by any conditions not appearing on the face of the bill itself; and if he has no notice of any circumstance to prevent him from fairly and honestly taking the indorsement, as that the indorser is likely to fail and not pay the price in due course, the indorsement has the effect of vesting in him the right to demand delivery of the goods.[2]

But if he knows that the indorser is insolvent, or

[1] Smurthwaite v. Wilkins, 31 L. J. C. P. 215.

[2] Jones v. Jones, 10 L. J. Ex. 481; s. c. 8 M. & W. 431.

that no bill has been accepted for the price of the goods, or that being accepted, it is not likely to be paid[1] : then the interposition of himself between the consignor and consignee, in order to assist the latter to disappoint the just rights and expectations of the former, would be an act done in fraud of the consignor's right to stop in transitu, and would therefore be unavailable to the party taking an assignment of the bill of lading under such circumstances, and for such purpose.

When there is a special or conditional indorsement as—"deliverable to B. if he accept and pay the accompanying draft, and, if not, then to the holder of the draft," this puts the indorsee for a valuable consideration to inquire whether or not the condition has been actually performed; and if not, he has no title to the goods.[2]

Where the consignee of a cargo received the bill of lading on the day he stopped payment, and transferred it, being insolvent, to a person or persons whom he called L. & Co., and from whom, after the consignee had on his own petition been adjudged bankrupt, a third party professed to purchase it, and afterwards, and before the ship arrived, another firm fairly and honestly bought it from the third party ; and on the ship's arrival the assignees in bankruptcy of the consignee took possession of the cargo ; it was held, that as the evidence showed the whole transaction between

[1] Cuming *v.* Brown, 9 East. Rep. 506.

[2] Barrow *v.* Coles, 3 Camp. 92.

the consignee and L. and Co., and M. the third party, to be collusive and colourable, and with the design of defrauding the creditors of the consignee, the question was, whether the third party had fairly and honestly made his purchase.[1]

Indorsement to recover previous advances.

When the bill of lading is taken to a named consignee, or is specially indorsed and transmitted to him as a security for previous advances, or to indemnify him against his liabilities on account of that particular consignment, an absolute or special property in the specified goods is vested in him from the time of their delivery on board, and the master is responsible to him for the safe delivery of the cargo. Thus, where goods were shipped, and bills of lading signed and transmitted to a factor, making them deliverable to him, and it was proved by correspondence that it was the intention to vest the property in the factor in security of previous advances: it was held, that the factor had a special property in the goods from the time of their delivery on board, and that he could sue the master for their non-delivery.[2]

So, where the London factors of a Newcastle manufacturer had remonstrated with him on the state of his account, and he had consigned goods to them, specifically to meet a bill drawn on them, and transmitted them a receipt signed by the mate of the ship, acknowledging the goods to have been received on board, to be delivered to them; it was held, that the

[1] Whitmore v. Lloyd, 2 F. & F. 36.

[2] Anderson v. Clark, 2 Bing. 20.

appropriation of these goods was complete, and that the shipowners were liable in not delivering them to the factors.[1]

So, where a corn merchant in Langford, who had been in the habit of consigning corn for sale to his factors in Liverpool, and obtaining their acceptances on the faith of such consignment, on 21st January obtained from the masters of two canal-boats (No. 604 and No. 54) receipts for full cargoes of oats, as on board their boats, deliverable to an agent in Dublin, "in care for, and to be shipped to," the factors in Liverpool; at the time, boat 604 was loaded, but no oats were then on board boat 54. On 2nd February the corn merchant forwarded these receipts to the factors, and drew a bill on them for the value, which they accepted and paid; but, some days afterwards, he gave a pressing creditor an order on the Dublin agent to deliver to that creditor both the cargoes. Boat 604 had then sailed, but boat 54 was only partially loaded, and on their arrival in Dublin, the creditor took possession of both cargoes. It was held, that the cargo of boat 604 had vested in the factors, and that they could maintain an action for delivery of it to them; but that they could not maintain such action for the cargo of boat 54, since none of it was on board, nor otherwise specifically appropriated to the factors when the receipt for that boat was granted by the master.[2] And where A., residing at Man-

[1] Evans v. Nichol, 4 Scott N. R. 43; s. c. 11 L. J. C. P. 6.

[2] Bryans v. Nix, 4 M. & W. 775; s. c. 8 L. J. Ex. 137.

chester, bought a quantity of oak-bark from B., at Dumfries, to be paid for in cash, and to be shipped "for delivery at Liverpool;" and a bill of lading deliverable to A., or assigns, and a draft for the price payable on demand, were sent to Manchester bankers to present the draft for acceptance. The bark was accordingly shipped and delivered at Liverpool to wharfingers and carriers, to be forwarded by them to Manchester; but the Manchester bankers, being unable to find A., returned the bill of lading and draft to B., who thereupon claimed the bark and received it from the wharfingers; it was held, that under the circumstances, the property in the bark had not passed to A., and that B. had a right to countermand the delivery.[1]

But where a contract was made with a mercantile firm, carrying on business in London and Odessa, for the purchase of a quantity of linseed at the latter place, to be paid for at certain dates, and, for the amount of the price, the Odessa partner drew bills on the purchaser, which were duly accepted and paid when due; the purchaser chartered a ship which was to proceed to Odessa with an outward cargo, and there take on board "from the agents of the freighter" the linseed, and being so loaded, to proceed to the port of the freighter's residence "and deliver the same to the order of the freighter, on being paid freight." On arrival at Odessa, the master produced

[1] Sheridan *v.* The New Quay Co., 4 Scott, N. S. 618; s c. 28 L. J. C. P. 58.

a copy of the charter-party, and applied for the linseed, which, he was informed, would be shipped in due time; the loading of the vessel commenced, but the Odessa house not being able to procure the entire quantity of linseed, the master agreed to receive wheat in substitute, which was shipped accordingly. When the linseed was loaded, the Odessa partner wrote to the London branch that the bill of lading should be sent by next post, but he afterwards procured the master to sign bills of lading, making the goods deliverable "to order or assigns," and immediately indorsed the bills of lading to a third party for value, who transferred them to other parties; it was held, that under the above circumstances, there was no such delivery of the goods as to vest the right of property or possession in the purchaser.[1]

Shipper may attach conditions to the shipment.

Though the shipment be made, and bills of lading taken to a consignee by name, the shipper and owner of the goods may alter the bills of lading, or attach conditions to the shipment, at any time before the bill of lading be transmitted, or the goods delivered to the consignee named. As where a merchant in Waterford had been in the practice of consigning cargoes of grain to a corn factor in Bristol, who had been accustomed to accept bills on faith of such consignments; the former wrote to the latter that he was about to consign to him a cargo of oats, in anticipation of which he had drawn on

[1] Ellershaw *v* Magniac, 6 Ex. 570.

him, and desiring him to effect an insurance on the cargo, and this bill the factor accepted. Before the ship sailed the merchant failed, and he then sent the bill of lading, blank indorsed, to another factor in Bristol, without informing him of his engagement with the first one; when the ship arrived the second factor, for his own convenience, transmitted the bill of lading to the first factor, desiring the latter to act for him. The first factor paid the freight and took possession of the cargo as a security for his own claim on the merchant, but it was taken out of his possession by others of the merchant's creditors, under a writ of attachment against him. It was held, that the first factor had not such a property in the goods as to enable him to maintain an action for delivery of them as against these creditors.[1] And in another case MacKenzie, a planter in Jamaica, being the owner of sugars, the produce of his estate, and being indebted to Ede, in London, for more than their value, shipped them on 4th April on board a ship which belonged to Ede, and which was in the practice of carrying supplies to the estates of MacKenzie and others, and of taking back consignments from these estates, and was then employed in that course. On 4th April, the captain signed and handed to MacKenzie a bill of lading, by which the sugars were to be delivered to Ede in London, he paying freight, and on the same day MacKenzie made an indorsement, that the sugars were to be delivered to Ede, only on condition of his

[1] Bruce *v.* Wait, 3 M. & W. 15; s. c. 7 L. J. Ex. 17.

giving security for certain payments; otherwise, to the agent of one Mitchell, to whom he was indebted more than their value, and to whom, on the same day, he indorsed and delivered the bill of lading, which was never in Ede's hands; previous to the ship's sailing, MacKenzie had advised Ede that the ship would sail with the sugars in question, directing him to insure, and advising him of bills drawn on account of the estates producing the sugars in question; but, on 4th April, he wrote to Mitchell to secure himself for his balance with the produce of the estate. The sugars arrived in London, and Ede paid the bills drawn on him, but did not comply with the condition of the indorsement of the bills of lading; it was held, that Mitchell was entitled to the sugars, for MacKenzie had not parted with the property by the delivery on board a ship so employed as above stated; nor by accepting the bill of lading from the captain as drawn by him, MacKenzie being entitled to change the destination of the sugars, until he had delivered them or the bill of lading. That the letters to Ede did not show an intention to consign the specific property to him, and that for these reasons (strengthened by proof of intention in the letter of 4th April), the indorsement to Mitchell passed the property.[1] But when goods are shipped "free on board" by the sellers to the purchasers, and a bill of lading, specially indorsed to the purchasers, is transmitted to them, the property of the goods is in the latter,

[1] Mitchel v. Ede, 11 Ad. & E. 888.

and they are liable for the price, though the ship be lost.[1]

When goods are shipped to the order and "on account and risk" of the consignee or purchaser, to be paid for by bills to be drawn and accepted for the amount, and not to be delivered until such bills are accepted, the property of the goods does not vest in the latter; and in such case it is likely the captain will be required to sign bills of lading deliverable to the shipper's own order, by whom one part unindorsed is transmitted to the consignee or purchaser to notify the shipment, and another part, indorsed, is sent to the consignor's own agent, to be delivered when the bills are accepted. In this case, therefore, the captain ought not to deliver the goods, unless to the holder of a bill of lading specially indorsed, as has been decided in Brandt *v.* Bowlby,[2] which was an action against the shipowners for not delivering a quantity of wheat according to the shipper's orders; it was held, that the property in the corn did not, upon the shipment of the same, absolutely belong to the corn merchant, but only under the condition that the bills were accepted, and that as these were not accepted, the corn never belonged to the corn merchant, and, therefore, that the plaintiffs were entitled to recover from the shipowners its value at the time it was delivered to the corn merchant. But if goods are

[1] Brown *v.* Hare, 3 Hurl. & N. 484; s. c. 29 L. J. Ex. 6.
[2] 2 B. & Ad. 932.

shipped on the order of a merchant, by parties abroad indebted to him, and on board his own ship, the shippers at the time telling the captain that they belong to him, and they advise the merchant that they have shipped the goods for his account and risk, and send him invoices in which they charge him a commission on the amount, but they induce the captain to sign bills of lading deliverable to blank or order, on the assurance that it was immaterial, as they were to be delivered to his owner, and one of these they forward to their own agent in this country with bills for the amount, which the merchant refuses to accept, and, in consequence, the agent indorses the bill of lading to a third party, by whom, and also by the merchant on arrival of the ship the goods are claimed; in such a case it has been held that the property vested in the merchant, and that, under the circumstances, the captain was justified in making delivery to his employer.[1]

Indorsement does not pass the property in the goods to a mere agent of the shipper.

When the holder of the indorsed bill of lading is merely the agent for the shipper, and has no other interest in the goods, the indorsement of the bill of lading to him does not pass the property; and if the master, without knowledge of an indorsed bill, has delivered them to order, or in terms of his bill of lading, the holder of the indorsed bill has no action against him for delivery. As where, on the order of a correspondent in this country, goods were shipped on account and at the risk of the consignee, to whom an

[1] Ogle *v.* Atkinson, 5 Taunt. 759.

invoice and unindorsed bill of lading were transmitted, informing him of the shipment, and that he had been drawn on for the amount; but, as a precaution, an indorsed bill of lading was sent by the shipper to his own agent, of which he did not inform the consignee; it was held, that the consignee having, upon the arrival of the ship, obtained possession of the cargo by delivery from the captain, though improperly, on the production of the unindorsed bill of lading, he had thereby become absolute proprietor of the goods, and that the holder of the indorsed bill of lading had no action against him for delivery of them.[1] And where goods were shipped to order, on account and risk of the consignee, and an invoice and a blank indorsed bill of lading were transmitted to him, and bills drawn on him for the amount; but another bill of lading was sent by the shipper to his own agent, under which he obtained delivery of the goods, and refused to give them up, unless upon immediate payment; the consignee offered to accept the bills as drawn at three months, and this being refused, he brought an action against the agents for delivery of the goods; and it was held, that by delivery of the goods to the captain, on account and at the risk of the consignee, to whom the invoice and bill of lading were transmitted, the property had passed to him, and that he was entitled to the goods under condition of acceptance of the bills.[2]

[1] Coxe *v.* Harden, 4 East. Rep. 211; see Moakes *v.* Nicholson, 34 L. J. C. P. 273; Brandt *v.* Bowlby, 2 B. & Ad. 932.

[2] Walley *v.* Montgomery, 3 East. Rep. 585.

When goods are shipped in the name of the consignor to be delivered to a factor, or agent, or broker, who has himself no property in the goods, and the captain refuses to deliver them to him as such, he cannot bring an action in his own name for delivery of the goods, or for any damage they may have sustained, but such action must be in the name of the consignor. As where, by a bill of lading, the captain was to deliver the goods for the consignors, and in their name, to the consignee, who had no property in the goods: it was held, that an action against the shipowners for damage done to the goods must be brought in the name of the consignors, although the consignee had insured the goods, and advanced the premiums of insurance before the arrival of the ship.[1] But on the insolvency of the consignee, the consignor can indorse the bill of lading to his agent, without value, in order to enable the agent to stop the goods in transitu.[2]

Where consignee has no property in the goods, action for damages must be brought in the name of the consignor.

The Admiralty Court Act, 1861, 24 Vict., c. 10, section 6, enacts—"The High Court of Admiralty shall have jurisdiction over any claim by the owner or consignee or assignee of any bill of lading of any goods carried into any port in England or Wales in any ship, for damage done to the goods, or any part thereof, by the negligence, or misconduct of, or for any breach of duty, or breach of contract on the part of the owner, master, or crew of the ship, unless it is

[1] Sargent *v.* Morris, 3 B. & Ald. 277.
[2] Morison *v.* Gray, 2 Bing. 260.

shown to the satisfaction of the court that at the time of the institution of the cause, any owner or part owner of the ship is domiciled in England or Wales: provided always that if in any such cause the plaintiff do not recover £20, he shall not be entitled to any cost, charges, or expenses incurred by him therein, unless the judge shall certify that the cause was a fit one to be tried in the said court.

This provision has in view chiefly the case of foreign vessels, but covers also the case of British ships similarly circumstanced, which, whatever liability to the English resident had been incurred, too often defied, by distance, the process of English common law. Even within this narrow sphere there is no maritime lien created by the section.[1] All beyond remains as before at common law.

The short delivery of goods brought to this country in foreign ships, or their delivery in a damaged state, was frequently a grievous injury for which there was no practical remedy; for the owners of such vessels being resident abroad, no action could be successfully brought against them in a British tribunal. To send the merchant who had sustained a loss to commence a suit in a foreign tribunal, probably in a distant country, could not be deemed a practical or effectual remedy. With a view to obviate a grievance so oppressive to British merchants, the enactment contained in the 6th section was passed. It was intended to operate by enabling the

[1] The Two Ellens, Law R. 3 Adm. 345.

party aggrieved to arrest the ship in cases, where, from the absence of the shipowner in foreign parts, the Common Law tribunals could not afford effectual redress. And it has been held, that the consignees named in a bill of lading are entitled, under the above Statute, to sue for negligence in the carriage of the goods, or for a breach of the contract contained in the bill of lading, although the property in the goods has not passed to them.[1]

Agent can transfer the property in the goods, by indorsement, for valuable consideration.

If goods are consigned to a factor or agent, and the bill of lading is in his name, he can indorse the bill of lading for a valuable consideration, so as effectually to transfer the property of the goods, or he can pledge the bill of lading for advances, either original or continued, provided the person honestly advancing the money has no notice that the agent is thus acting fraudulently or without authority; but mere notice that the agent is not the owner, will not affect the validity of the transaction.

It is often a matter of great nicety to determine whether or not the vendor's purpose, or intention, was really to reserve a *jus disponendi.*

Mr. Benjamin, in his work on sales, says, "The following seem to be the principles established by the authorities:—

"*Firstly.*—Where goods are delivered by the vendor in pursuance of an order, to a common carrier for delivery to the buyer, the delivery to the carrier

[1] The Nepoter, Law R. 2 Adm. 375; The Figlia Maggiore, Law R. 2 Adm. 106.

APPENDICES.

APPENDICES.

FORM A.

Protest, by Shippers of Goods, against the Master and Owners of a Vessel, in consequence of the Master's refusal, after Notice, to sign a Bill of Lading in the customary form.

By the public instrument of protest hereinafter contained;

Be it known and made manifest unto all people, that on the day of , in the year of our Lord one thousand eight hundred and , personally came and appeared before me, R. B., Notary Public, duly authorized, admitted and sworn, residing and practising in L , in the County of L , in the United Kingdom of Great Britain and Ireland, and also a Master Extraordinary of the High Court of Chancery in England, G. G., one of the firm of G. G. and Co., of L , merchants, the shippers of goods and merchandise, per the ship or vessel the bound on a voyage from L , for New York, in the United States of America, and C. D., of L , clerk to the said G. G. and Co., who did severally declare and state: and first this appearer, the said C. D., for himself did declare and state as follows; that is to say, that this appearer did attend for the said G. G. and Co., the shippers, and did conduct the delivery on the day of instant, at and alongside of the

said vessel the , of the goods and merchandize mentioned in the duplicate (or copy) bill of lading after mentioned. That E. F., the master of the said ship or vessel, signed and gave a bill of lading for the seven chests of merchandize therein mentioned, with the words "one chest in dispute, if on board to be delivered, contents unknown," written at the foot thereof, and that the said G. G. and Co. objected to the same; and that this appearer, the said C. D., was present, and did see the said seven chests of merchandize carefully delivered, at and alongside the said vessel at L aforesaid, in the usual manner, and left under the charge of the mate and crew thereof; and that on this day of instant, this appearer, the said C. D., did deliver to the said E. F. a notice and demand, signed by the said G. G. and Co., of which a copy is hereunto annexed, but the said E. F. refused to comply therewith, or to sign or deliver any other bill of lading in another form.

And the appearer, the said G. G., for and on behalf of himself and of his said co-partner in trade, under the said firm of G. G. and Co., and for and on behalf of all other persons who are, or shall or may be, interested in the said goods and merchandize, doth declare and protest before me, and I, the said Notary, at the request of the said shippers, the said G. G. and Co., do protest against the owners and the said master of the said vessel, for and in respect of the said refusal and neglect to sign and give a

correct bill of lading for the said goods, in the usual and customary form, and for and in respect of all fall of markets, loss, damage or expenses which the said shippers, or any other person or persons, who is, or are, or shall, or may be interested therein, have or hath incurred, or may incur, by reason of the premises.

G. G.
C. D.

Thus protested in due form at L aforesaid, the day and year first before written; before me,

Seal.

(Signed) *R. B.*,
Notary Public, L.

FORM B.

Copy of the Notice to the Master referred to in the foregoing Protest, objecting to the Qualification introduced into the Bill of Lading without consent, and demanding a Bill of Lading in the customary form.

To Captain E. F., Master of the ship or vessel called the

We, the shippers of seven chests of merchandize on board the for New York, hereby give you notice, that we object to the qualification or exception of "one chest in dispute, if on board, to be delivered, contents unknown," added without our consent to the bill of lading, signed by you for the said goods, for New York, and that we hold you and the owners of the vessel responsible for the value and safety of all and every goods which we shall prove to have been delivered at the said vessel; and we demand and require you forthwith to sign and deliver to us a bill of lading for the said goods, in an usual, legal, and customary form, and we give you notice, that in default thereof, we protest against you, and we hold you and the owners of the vessel responsible for all loss, damage, or expenses by reason of the premises.

Liverpool, day of 18 .

G. G. & Co.

18 & 19 VICT., 1855, CAP. CXI.

AN ACT TO AMEND THE LAW RELATING TO BILLS OF LADING.
(*14th August* 1855.)

ABSTRACT OF THE ENACTMENTS.

1. *Rights under bills of lading to vest in consignee or indorsee.*
2. *Not to affect right of stoppage in transitu or claims for freight.*
3. *Bill of lading in hands of consignee, &c., conclusive evidence of the shipment as against master, &c.—Proviso.*

By this Act,

After reciting that by the custom of merchants a bill of lading of goods being transferable by indorsement, the property in the goods may thereby pass to the indorsee, but nevertheless all rights in respect of the contract contained in the bill of lading continue in the original shipper or owner, and it is expedient that such rights should pass with the property: And that it frequently happens that the goods in respect of which bills of lading purport to be signed have not been laden on board, and it is proper that such bills of lading in the hands of a *bona fide* holder for value should not be questioned by the master or other person signing the same on the ground of the goods not having been laden as aforesaid,—

It is Enacted as follows:—

1. Every consignee of goods named in a bill of lading, and every indorsee of a bill of lading to whom the property in the goods therein mentioned shall

pass, upon or by reason of such consignment or indorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.

2. Nothing herein contained shall prejudice or affect any right of stoppage *in transitu*, or any right to claim freight against the original shipper or owner, or any liability of the consignee or indorsee, by reason or in consequence of his being such consignee or indorsee, or of his receipt of the goods by reason or in consequence of such consignment or indorsement.

3. Every bill of lading in the hands of a consignee or indorsee for valuable consideration representing goods to have been shipped on board a vessel shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the bill of lading shall have had actual notice at the time of receiving the same that the goods had not been in fact laden on board: Provided, that the master or other person so signing may exonerate himself in respect of such misrepresentation by showing that it was caused without any default on his part, and wholly by the fraud of the shipper, or of the holder, or some person under whom the holder claims.

BILLS OF LADING.

Act No. IX. of 1856.

(Received the assent of the Governor General on the 11th April 1856.)

Recites expediency of the contract passing, as well as the property, by indorsement of bill of lading, and that ship-master be bound by bills of lading in hands of bona fide holder, although goods not shipped.

1. *Indorsee having property in the goods to have same benefit as though named in the contract.*
2. *Not to prejudice stoppage in transitu or liabilities of shipper or consignee.*
3. *Bill of lading in hands of indorsee for value, conclusive evidence against Master, saving right of proof by latter of fraud of shipper or holder.*

An Act to amend the Law relating to Bills of Lading.

Preamble.

Whereas by the custom of Merchants a Bill of Lading of goods being transferable by indorsement, the property in the goods may thereby pass to the indorsee, but nevertheless all rights in respect of the contract contained in the Bill of Lading continue in the original shipper or owner, and it is expedient that such right should pass with the property; and whereas it frequently happens that the goods in respect of which Bills of Lading purport to be signed have not been laden on board, and it is proper that such Bills of Lading in the hands of a *bona fide* holder for value should not be questioned by the Master or other

person signing the same, on the ground of the goods not having been laden as aforesaid: It is enacted as follows:—

Rights under bills of lading to vest in consignee or indorsee.

I. Every consignee of goods named in a Bill of Lading, and every indorsee of a Bill of Lading to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or indorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the Bill of Lading had been made with himself.

Not to affect right of stoppage *in transitu* or claims for freight.

II. Nothing herein contained shall prejudice or affect any right of stoppage *in transitu*, or any right to claim freight against the original shipper or owner, or any liability of the consignee or indorsee by reason or in consequence of his being such consignee or indorsee, or of his receipt of the goods by reason or in consequence of such consignment or indorsement.

Bill of lading in hands of consignee, &c. conclusive evidence of the shipment as against master, &c.

3. Every Bill of Lading in the hands of a consignee or indorsee for valuable consideration, representing goods to have been shipped on board a vessel, shall be conclusive evidence of such shipment as against the Master or other person signing the same, notwithstanding that such goods, or some part thereof may not have been

so shipped, unless such holder of the Bill of Lading shall have had actual notice at the time of receiving the same that the goods had not in fact been laden on board. Provided that the Master or other person so signing may exonerate himself in respect of such misrepresentation, by showing that it was caused without any default on his part, and wholly by the fraud of the shipper, or of the holder, or some person under whom the holder claims.

Proviso.

CUSTOMS LAWS CONSOLIDATION.

39 & 40 Vict., 1876, Cap. XXXVI.

An Act to consolidate the Customs Laws.

(*24th July* 1876.)

Section 52. The captain or other officer having the charge of any ship (having commission from Her Majesty or from any foreign state), having on board any goods laden in parts beyond the seas, shall, on arrival at any port in the United Kingdom, and before any part of such goods be taken out of such ship, or when called upon so to do by any officer of the Customs, deliver an account in writing under his hand to the best of his knowledge of the quality and quantity of every package or parcel of such goods, and of the marks and numbers thereon, and of the names of the respective shippers and consignees of the same, and shall make and subscribe a declaration at the foot of such account declaring to the truth thereof, and shall also truly answer to the Collector or other proper officer such questions concerning such goods as shall be required of him, and on failure thereof such captain or other officer shall forfeit the sum of one hundred pounds; and all such ships shall be liable to such searches as merchant ships are liable to, and the officers of the Customs may freely enter and go on board all such ships, and bring from thence on shore into the Queen's warehouse any goods found on board any such ship as aforesaid, subject

nevertheless to such regulations in respect to ships of war belonging to Her Majesty as shall from time to time be directed in that respect by the Commissioners of Her Majesty's Treasury.

Section 53. The master of every ship arriving from parts beyond the seas shall, at the time of making report, answer all such questions relating to the ship, cargo, crew, and voyage as shall be put to him by the collector or other proper officer; and if he refuses to answer, or does not answer truly, or if after the arrival within four leagues of the coast of the United Kingdom bulk shall be broken, or any alteration made in the stowage of the cargo of such ship so as to facilitate the unlading of any part of such cargo before report of such ship and cargo, or if any part be staved, destroyed, or thrown overboard, or any package be opened, unless cause be shown to the satisfaction of the Commissioners of Customs, in every such case the master shall forfeit the sum of one hundred pounds.

SEA CUSTOMS.

Act No. VIII. of 1878.

(*Received the assent of the Governor General on the 8th March* 1878.)

An Act to consolidate and amend the Law relating to the levy of Sea Customs-duties.

Bulk not to be broken until manifest, &c., delivered and vessel entered inwards.

Section 57. No vessel arriving in any Customs-port shall be allowed to break bulk until a manifest has been delivered as hereinbefore provided; nor until a copy of such manifest, together with an application for entry of such vessel inwards, has been presented by the Master to the Customs-collector, and an order has been given thereon for such entry.

Master, if required, to deliver bill of lading, &c. to Customs-collector.

Section 58. The Master shall, if required so to do by the Customs-collector at the time of presenting such application, deliver to the Customs-collector the bill of lading or a copy thereof for every part of the cargo laden on board, and any port clearance, cocket or other paper granted in respect of such vessel at the place from which she is stated to have come, and shall answer all such questions relating to the vessel, cargo, crew and voyage as are put to him by such officer.

And answer questions.

The Customs-collector may, if any requisition or question made or put by him under this section is not complied with or answered, refuse to grant such application.

Schedule to Section 167 *of the above Act.*

Clause 20	If any bill of lading or copy required under section 58 is false, and the Master is unable to satisfy the Customs-collector that he was not aware of the fact; or if any such bill or copy has been altered with fraudulent intent; or If the goods mentioned in any such bill or copy have not been *bona fide* shipped as shown therein; or If any such bill of lading, or any bill of lading of which a copy is delivered, has not been made previously to the departure of the vessel from the place where the goods referred to in such bill of lading were shipped; or If any part of the cargo has been staved, destroyed or thrown overboard; or if any package has been opened and such part of the cargo or such package be not accounted for to the satisfaction of the Customs-collector.	The Master of the vessel shall be liable to a penalty not exceeding one thousand Rupees.

FORMS OF BILLS OF LADING.

FORMS OF BILLS OF LADING.

SAILING SHIP (Ordinary Form).

Shipped in good order and well conditioned by
in and upon the good Ship called the
whereof is Master for this present voyage
and now riding at anchor at and bound for

being marked and numbered as in the margin and are to be delivered in the like good Order and well conditioned at the aforesaid Port of
the Act of God the Queen's Enemies, Fire, all and every other Dangers and Accidents of the Seas, Rivers, and Navigation of whatever nature or kind soever excepted unto
or to Assigns, on paying Freight for the said Goods

with Primage and Average accustomed. In Witness whereof the Master or Purser of the said ship hath affirmed to Bills of Lading, all of this Tenor and Date, one of which Bills being accomplished, the others to stand void.
Dated in
Weight and Contents unknown.

EAST INDIA, AFRICA, AND CHINA TRADES (Outwards).

Shipped in good order and condition by
on board the good Ship
whereof is Master for this present voyage,
lying in the port of , and bound for

being marked and numbered as in the margin, and to be delivered (subject to the exceptions and stipulations hereinafter mentioned) in the like good order and condition, at the aforesaid port of
unto
or to his or their Assigns. Average as accustomed. Freight for the said goods and primage together, to be paid on delivery, as per endorsement, in cash, without deduction.

The following are the exceptions and stipulations referred to :—The Act of God, the Queen's Enemies, Pirates, Robbers by Land or Sea (but not pilferage), Restraint of Princes, Rulers, or People, Fire, Jettison, Barratry, the neglect and default of Pilot,

Master, or Crew, in the Navigation of the Ship; and all and every the Dangers and Accidents of the Seas, Rivers, and Navigation, of whatever nature or kind, are excepted.

The Ship is not liable for leakage, breakage, loss or damage by heat, sweat, rust, or decay, unless occasioned by improper stowage.

The Ship will not be liable for gold, silver, bullion, specie, jewellery, precious stones, or precious metals, unless Bills of, Lading are signed for such goods, and the value declared therein.

If goods of a dangerous nature are shipped without being previously arranged for, they are liable to be thrown overboard, and their loss, as well as any loss or damage to the ship or cargo, will fall upon the Shippers or Owners of such goods.

The Master is to deliver the goods with all reasonable despatch; and the Consignees are to be ready to receive them within forty-eight hours after the Ship commences to unload, otherwise the Master or Agent may discharge and store them at the expense and risk of the Owners of the goods.

In witness whereof, the Master, Owner, or Agent, of the said Ship, has signed Bills of Lading exclusive of the Master's copy, all of this tenor and date, one of which being accomplished, the others to stand void.

Weight, measure, and contents unknown.

Freight payable at port of discharge.

THE AUSTRALIAN AND NEW ZEALAND TRADE FORM

Resembles the above, but excepts, in addition, delay in delivery from absence of, or defect in, marks, numbers, or address; and mentions chemicals with dangerous goods. Freight payable in London, Ship lost or not lost.

EAST INDIA, AFRICA, AND CHINA TRADES (Homewards).

Shipped in good order and condition by
on board the Ship whereof is Master for this present
voyage lying in the Port of
and bound for

being marked and numbered as per margin
(if quality marks are used they are to be of the same size as the leading marks and contiguous thereto), and to be delivered, subject to the exceptions and conditions hereinafter mentioned, in the like good order and condition from the Ship's tackles, where the Ship's responsibility shall cease, at the aforesaid Port of
or so near thereto as she may safely get ; unto

or to his or their Assigns. Freight to be paid for the said goods at the rate of

Average as accustomed.

The following are the exceptions and conditions above referred to :—

Weight, measure, quality, contents, and value unknown.

The Act of God; the Queen's Enemies; Pirates; Robbers by land or sea; restraint of Princes, Rulers, or people; loss or damage from explosion, heat, or fire on board, in hulk or craft, or on shore; jettison; barratry; any act, neglect, or default whatsoever, of Pilots, Master, or Crew in the navigation of the Ship; and all and every the dangers and accidents of the seas and rivers, and of navigation of whatever nature or kind are excepted.

The Ship is not liable for insufficient packing, or reasonable wear and tear of packages (cutting excepted); for inaccuracies, obliteration, or absence of marks or countermarks, numbers, address, or description of goods shipped; leakage; breakage; sweat; rust; decay. Fines and expenses and losses by detention of Ship or Cargo, caused by incorrect marking, or by incomplete or incorrect description of contents or weight or of any other particulars required by the authorities at the port of discharge, upon either the packages or bills of lading, shall be borne by the owners of the goods.

The owners of this Ship will not be accountable for Gold, Silver, Bullion, Specie, Jewellery, Precious Stones, Silk Goods, Quinine, or Precious Metals, or beyond the amount of One Hundred Pounds for any one package, or relatively for any portion thereof, unless shipment be made upon a special shipping order, containing a declaration of the value, and the bills of lading are signed in accordance therewith.

If medicinal fluids, or any other goods of an inflammable, damaging, or dangerous nature are shipped without being previously declared and arranged for, they are liable, upon discovery, to be thrown overboard, and the loss will fall upon the Shippers or Owners of such fluids or goods, as well as any damage caused to the Ship or other Cargo on board of her.

In case of the blockade or interdict of the port of discharge, or if the entering of, or discharging in, the port shall be considered by the Master unsafe by reason of war or disturbances, the Master may land the goods at the nearest safe and convenient port at the expense and risk of the owners of the goods; and the Ship's responsibility shall cease when the goods are so discharged into proper and safe keeping, the Master giving immediate notice of the same to the consignees of the goods, so far as they can be ascertained.

The Master or Agent shall have a lien on the goods for payments made, unpaid freights, or liabilities incurred in respect of any charges stipulated herein to be borne by the owners of the goods.

In the event of claim for short delivery, price to be the market price of the day at port of discharge on the day of the Ship's reporting at the Custom House, less charges and brokerage.

In Witness whereof the Master or Agent of the said Ship has signed Bills of Lading, exclusive of the Master's copy, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated at 18 .

GOVERNMENT FOREIGN FORM, for either Ships or Steamers.

Cases.	Casks or Barrels.	Bales.	Coils.	Pieces.	Loose Iron Rails.	
↑ I						

Shipped in good order and condition, by the Secretary of State for India in Council, in and upon the good Ship called the , Burden Tons or thereabouts, whereof is Master for this present voyage , and now lying in and bound for in the East Indies viâ the Suez Canal

being marked and numbered as in the margin, and are to be delivered in the like good order and condition at the aforesaid Port of
(the dangers of the Seas only excepted) unto the
there
resident, or to their Assigns. *Freight* being payable according to the conditions annexed to the Tender or Tenders, and at the rates therein mentioned, as follows, viz.: *Two-thirds* in England, and the remaining *One-third* in India, on due delivery, the latter payment at the rate of two shillings per Rupee, unless the total amount is £30 or under, when the whole freight will be paid in England.

In witness whereof the Master of the said Ship hath affirmed to Three Bills of Lading all of this tenor and date. The one of which Three Bills of Lading being accomplished, the other Two to stand void. Dated in London the 18 .

Inside and contents unknown.

CANADIAN TRADE (for either Ships or Steamers).

Shipped in good order and condition by

on board the Master

now lying in and bound for

marked and numbered as in the margin, to be delivered in like order and condition at the Port of (dangers and accidents of the Seas and Navigation excepted,) to the Order of
Freight to be paid in with Average accustomed. In Witness whereof I have affirmed to Bills of Lading of this tenor and date, one of which being accomplished, the other to stand void.
Dated in

* To sail with or without Pilots, with leave to tow or assist Vessels in all situations, and with leave to call at any other Port or Ports, without being deemed a deviation. The Acts of God, the Queen's Enemies, Pirates, Restraints of Princes, Rulers, and People, Vermin, Jettison, Barratry, and Collision, Fire on Board, in Hulk or Craft, or on Shore, and all Accidents, Loss, and Damage whatsoever from Machinery, Boilers, Steam, and Steam Navigation, or from Perils of the Seas and Rivers, or from any Act, Neglect, or Default whatsoever of the Pilot, Master, or Mariners in Navigating the Ship excepted; it being agreed that the Captain, Officers, and Crew of the Vessel in transmission of the Goods, as between the Shipper, Owner, or Consignee thereof, and the Ship and the Shipowners be considered the Servants of such Shipper, Owner, or Consignee. And with liberty to tranship the said Goods or Specie on board any other Craft or Steamer. Weights, Measures, and Contents unknown. Ship free of Lighterage, Breakage, Rust, Leakage, Torn Wrappers, Broken Cords and Hoops, and the consequences of incorrect delivery of Goods from insufficiency of Marks or Numbers. The Goods to be taken from Ship by the Consignees immediately after arrival, or the same will be transhipped into Lighters, or Landed, or Warehoused, at the expense and risk of the Proprietors of such Goods Freight payable in Cash without deduction. Should the Navigation be interrupted by Ice, the Goods to be delivered at the nearest Accessible Port for account and risk of the Consignees.

* *Note.*—When used for *Steam-Ships*, a slip of paper with these exceptions printed thereon, is pasted on the margin of the Bill of Lading.

COAL TRADE.

tons in hold.
tons in do.
tons in do.
tons in do.

Total... tons cargo.

Shipped in good order and well-conditioned, by in and upon the good Ship called the whereof is Master for this present Voyage, and now in the Port of and bound for

which are to be delivered in the like good order and condition, alongside any Craft, Steam Vessel, Depôt Ship or Ships, Wharf, Pier, or Arsenal, where she may safely deliver, at the aforesaid Port of

(The Act of God, Restraint of Princes and Rulers, the Queen's Enemies, Fire, and all and every other Dangers and Accidents of the Seas, Rivers, and Steam Navigation, of whatever nature and kind soever, during the said voyage, always excepted) unto or to Assigns, he or they paying Freight, and performing all other conditions, as per Charter-Party.

tons in hold.
tons in do.
tons in bunkers.

Total... tons of coals on board for ship's use, independently of the cargo.

The Cargo to be received from alongside the Ship, at the rate of per day, weather permitting (Sundays and Holidays excepted).

In Witness whereof, the Master of the said Ship hath affirmed to Bills of Lading, all of this tenor and date, the one of which Bills being accomplished, the others to stand void.

Dated at

Note.—The following or similar indorsements are usually made on the back of this form:—

I, , do hereby certify that the Coals shipped on board the Captain are of the best description, known by the denomination of Coal, and that the same were duly (fresh wrought and double screened) at the time of shipment.

Received on account of Freight the sum of Sterling, and to be deducted on settlement at Port of Discharge. Interest and insurance paid here.

£

CONTINENTAL TRADE.

Shipped in good order and condition by
on board the Steam-ship or Vessel called the
whereof is Master for this present voyage,
and now lying in this Port and bound for
with liberty to sail with or without Pilots, and to tow or assist Vessels in all situations without being deemed a deviation.

Measurement.	Gross Weight.		
Feet.	Cwt.	qrs.	lbs.

being marked and numbered as in the margin, with liberty, in case of Accident, to tranship the said goods or specie on board any other Craft or Steamer, and to be delivered, subject to the exceptions and conditions hereinafter men-

tioned, in the like good order and condition, either into Lighter or on the Quay, where the ship's responsibility shall cease, at the Port of

unto

50

or to his or their Assigns, he or they paying Freight for the said Goods

Shillings and Pence Sterling per Ton Gross Weight
Pence Sterling per Cubic Foot
Shillings and Pence Sterling
} with 15 per cent. Primage,

and Average accustomed, and Disbursements £ as per margin.

The following are the exceptions and conditions above referred to :—The Act of God, the Queen's Enemies, Pirates, Robbers, Restraint of Princes, Rulers, and People, Vermin, Jettison, Barratry and Collision, Fire on Board, in Hulk, or Craft, or on Shore, and all Accidents, Loss, and Damage whatsoever, from Machinery, Boilers, Steam and Steam Navigation, or from Perils of the Seas and Rivers, or from any Act, Neglect or Default whatsoever of the Pilot, Master, or Mariners, in navigating the ship, and the Owners being in no way liable for any consequences of the causes before mentioned.

Weight, contents, measure, and value unknown, and not answerable for leakage, ullage, spiles, breakage, rust, breakage of seals, torn wrappers, corruption, inherent deterioration, stained, repaired, or insufficient packages, or for incorrectness or insufficiency in the marks or numbers. The Goods to be taken from the Ship by the Consignees as soon after arrival as the Vessel is ready to discharge, or the same may be transhipped into lighters, and/or landed on the quays, and/or warehoused, all at the expense and risk of the Owners of such Goods.

In Witness whereof the Master or Agent of the said Vessel hath affirmed to Bills of Lading exclusive of the Master's copy, all of this tenor and date, one of which Bills being accomplished, the others to stand void.

Dated in

FRENCH TRADE.

Shipped in good order and condition by
on board the Steamship or Vessel called the
whereof is Master for this present voyage,
and now lying in this Port and bound for
with liberty to sail with or without Pilots, and to tow or assist Vessels in all situations without being deemed a deviation.

Gross Weight.		
Cwts.	qrs.	lbs.

being marked and numbered as in the margin, with liberty to tranship the said goods or specie on board any other Craft or Steamer, and to be delivered, subject to the exceptions and conditions hereinafter mentioned, in the like good order and condition from the ship's deck, where the ship's responsibility shall cease, at the Port of
unto to be by them forwarded thence at ship's expense but at shipper's risk, to

en gâre at

through carriage or freight at the rate of fcs. per 1,000 kilos, and Average accustomed, and Disbursements £ as per margin to be paid by

The following are the exceptions and conditions above referred to:—The Act of God, the Queen's Enemies, Pirates, Thieves, Robbers, Restraint of Princes, Rulers, and People, Vermin, Jettison, Barratry, and Collision, Fire on Board, in Hulk, or Craft, or on Shore, and all Accidents, Loss, and Damage, whatsoever, from Machinery, Boilers, Steam and Steam Navigation, or from Perils of the Seas and Rivers, or from any Act, Neglect, or Default, whatsoever, of the Pilot, Master, or Mariners, in navigating the Ship, and the Owners being in no ways liable for any consequences of the causes before mentioned.

Weight, contents, measure, quantity, quality, value, marks, and numbers unknown, and not answerable for leakage, ullage, spiles, damage, breakage, rust, breakage of seals, torn wrappers, corruption, inherent deterioration, defective, stained, repaired, or insufficient packages. The Goods to be taken from the ship by the Consignees as soon after arrival as the Vessel is ready to discharge, or the same may be transhipped into lighters, and/or landed on the quays, and/or warehoused, all at the expense and risk of the Owners of such Goods.

In Witness whereof the Master or Agent of the said Vessel hath affirmed to Bills of Lading, exclusive of the Master's copy, all of this tenor and date, one of which Bills being accomplished, the others to stand void.

Dated in

Note.—The following clause is inserted in the margin of bills of lading to St. Nazaire:—

This Bill of Lading is Not Negociable, and must be considered as simply a receipt for the Goods herein mentioned, which will be delivered by the Railway Company's Agent at to the Consignee named herein, against his simple receipt and without the production of this Bill of Lading.

SPANISH TRADE.

Shipped

in good order and condition by
in and upon the Steam Ship called the whereof is Master
for the present Voyage or whoever else may go as Master in the said Ship, and
now lying in the Port of and bound for Lisbon, Gibraltar Bay, Malaga and Cadiz, with liberty to call and stay at any Port or Ports in any rotation in Great Britain, Ireland, France, Spain and Portugal, to discharge or receive Cargo, or for any other purpose whatever. With liberty to sail with or without Pilots, and to tow and assist vessels in all situations, and to carry Goods of all kinds, without being liable for the consequences.

	Gross Weight.				
	Tons	Cwt.	qrs.	lbs.	Kilograms.

being marked and numbered as in the margin, and to be delivered subject to the exceptions and conditions hereinafter mentioned in the like good order and condition from the ship's tackles (where the ship's responsibility shall cease) at the aforesaid Bay of (the Act of God, the Queen's Enemies, Pirates, Restraint of Princes and Rulers, Fire at Sea or on Shore, from any act, neglect, or default whatsoever of the Pilot, Master, or Mariners in the navigation or management of the Ship, or damage, or loss from Collision, Accidents from Machinery, Boilers, Steam, or any other Accidents of the Seas, Rivers, and Steam Navigation of whatever nature or kind soever excepted) unto

or to Assigns, he or they paying freight and primage for the said Goods, as per margin, in Gold or Silver, only at the Exchange of 48*d*. per $, with average as accustomed.

Weight, Contents, and Value unknown, and not answerable for Rust, Leakage, Breakage, corruption or insufficiency of Packages and wrong delivery of Goods caused by error or insufficiency in the marks or numbers, or through their not being fully marked with the Port of destination, or from the consequences of Vermin, or for damage caused by other Goods by Sweating, Rust, or otherwise. Further, the Owners will not be responsible for Breakage of Looking Glasses or any kind of Glass or Marble or other fragile Goods, or for the value of Specie, Watches, Jewellery, or other Valuables, which must be shipped under Special Agreement, and Freight paid accordingly. Immediately the Vessel is ready to discharge, the Goods are to be taken from the Ship at the Merchant's risk and expense by the Agents for the Company who are to receive the same on the Consignees' account, and the delivery to the said Agents is to be considered the delivery to the Consignees; the Company's liability ceasing immediately the Goods are delivered from the Ship's side. In the event of Quarantine being imposed on the Steamers, the Owners have the option of discharging the Goods into Hulk or Lighter at the Shipper's risk and expense, or if kept on board, each shipment to pay its proportion of Quarantine expenses.

The Consignees to pay "Derechos de descarga," as per Article 6 of the Decree of the Spanish Government, dated Madrid, 22nd November 1868.

In Witness whereof the Master or Agents of the said Ship has signed Bills of Lading, exclusive of the Master's or Consul's copies all of this tenor and date, one of which being accomplished, and delivered up to the Agents of the Steamer in exchange for the Goods duly endorsed by the consignee, the others to stand void.

Dated in 18

TURKISH TRADE (Outwards).

Costantinopoli, li

Ha caricato con il nome di Dio una volta tanto en questo porto

per conto e rischio di chi spetta, sotto coperta del

nominato commandate dal Capito

le sotto nominate mercanzie, asciutte, entiere e ben

condizionate e numerate come in margine per esser condotte in questo presente viaggio nella stessa condizione in

Taganrog e consegnate al li

contro il nolo di

Ed in obbligazione di cio il suddetto Capitano ha firmato questa con altre simili da valere ad un solo effetto. Dio l'accompagni a salvamento.

(Translation.)

Constantinople,

In the name of God shipped in this Port, once for ever, by on account and risk of the concerned under the deck of the whereof is Master the under-mentioned merchandise dry entire and in good condition and numbered as per margin to be forwarded by the present voyage, in the same condition at Taganrog, and delivered to

against the rate of freight of

and on obligation of this the abovementioned Captain has signed this and other similar Bills of Lading, one of which being accomplished the others to stand void. "May God accompany him in safety."

Note.—This Bill of Lading is signed either by the Shipper or by the Master.

MEDITERRANEAN, BLACK SEA, AZOV, AND DANUBE TRADES.

Shipped in good order and condition by
or received in good order and condition for shipment in the Steam-ship
whereof is Master for the present Voyage, or whoever else may go
as Master, lying in the Port of and bound for
(having liberty to call at any Port or Ports in or out of the customary route in any order, to receive and discharge Coals, Cargo, and Passengers, or for any other purpose whatever, to sail with or without Pilots, to tow and assist Vessels in all situations, and to tranship the Goods, or part thereof, by any other Steamer, at Merchant's risk, either before the commencement or at any period of the voyage).

being marked and numbered as per margin, warranted legal merchandize here and at the Port of discharge, and to be delivered from the Ship's Deck, when the Ship's responsibility shall cease, in the like good order and condition, at the aforesaid Port of
(or so near thereunto as she can safely get), subject to the conditions expressed herein, which it is agreed shall constitute the contract between the Shippers or Consignees and the Master and Owners of the said Steam-ship (The Act of God, the Queen's Enemies, Pirates, Robbers, Thieves, by land or sea, Restraint of Princes, Rulers or People, Barratry of Master or Mariners, Vermin, Rain, Spray, Insufficient Packing or Packages, Inaccuracies, Obliteration or absence of Marks, Numbers, Address, or Description of Goods shipped; not liable for incorrect delivery, unless each Package shall have been distinctly marked by the Shippers before shipment with the Name of the Port of Destination in letters not less than two inches long; Leakage, Breakage, Rust, Natural Decay, Loss or Damage by Machinery, Boilers, Coal Dust, or Steam, however caused: or from Collision, Stranding or Wreck, however caused; or from Explosion, Heat or Fire on Board, in Hulk or Craft, or on Shore, however caused; or from Evaporation, or smell from other Goods, Jettison, Barratry, Misfeasance, error of judgment, negligence or default of Pilot, Master, Mariners, Engineers, or other persons in the service of the Ship, whether in navigating the Ship or otherwise, risks of Craft or Hulk, or transhipment; and all and every the Dangers and Accidents of the Seas, Land and Rivers, and of Navigation of whatever nature or kind, being excepted, and the Ship not being liable for any consequences of causes herein excepted, however originating) unto

or to his or their Assigns—

Freight and Primage for the said Goods, as per margin, to be paid by the Shippers in
(free of Interest, Vessel lost or not lost) on or before the departure of the Vessel the Owners or Agents to have an absolute lien on the said Goods or any part thereof and the right of stopping by Telegraph, or otherwise, the delivery of the same, and discharging them in their name, and holding them till all Costs, Freight, Primage, Interest and

Insurance, Demurrage, or Averages on present or previous shipments due by the Shippers, their Principals or Agents, are paid in full, and to have the liberty to sell the goods by Auction, and retain the Freight and all charges.—Lighterage and Average accustomed.

In Witness whereof, the Master or Agent, on behalf of the Owners of the said Ship, hath affirmed to Bills of Lading, one of which bills being accomplished, and delivered up to the Owners or their Agents, in exchange for the Goods, the other to stand void.

Dated in this day of 188

Not accountable for Weight, Measure, Contents, Quality, Description, and Quantity or Value.—The Goods are to be taken away by Consignees from Steamer's tackle, immediately she is ready to unload, otherwise the Master or Agent of the Steamer may discharge the Goods into hired Lighters, Hulk, Lazaretto, or Temporary Depôt, at the expense and risk of the Owners of the Goods after they leave the Ship's deck. All fines, or expenses, or losses by detention of Cargo or Vessel, caused by incorrect marking of the Goods, or by incomplete or incorrect description of weight (or of any other particulars required by the Authorities of the Port of Discharge), upon either the Package or Bill of Lading, shall be paid by the Shipper or Consignee of the Goods, the Owners of the Steamer having a lien for the payment of all such costs and charges. The Owners of the Steamer shall not be accountable for Gold, Silver, Bullion, Specie, Jewellery, Precious Stones or Metals, or beyond the value of One Hundred Pounds for any one Package unless the value is declared on a Special Bill of Lading and Freight paid accordingly, and in no case shall any claim be made beyond the Invoice value of any Goods lost or damaged.

Note.—The following clauses are inserted along the margin of the Bill of Lading:—

In case of quarantine, the goods may be discharged into quarantine depôt, hulk or other vessel, as required for the Ship's despatch, or should this be impracticable or the Ship not be admitted, the Master may proceed on his voyage, and land the Goods at the nearest safe port (in his opinion) at the risk and expense of the Owners of the Goods; quarantine expenses upon the Goods, of whatever nature or kind, shall be borne by the Owners of the Goods. In case of the blockade or interdict of the Port of Discharge, or if the entering of, or discharging in, the port shall be considered by the Master unsafe, by reason of war or disturbances, or in case the Steamer should be prevented by Ice from reaching the intended Port of Discharge, the Master may land the goods at any other Port which he may consider safe, at the expense and risk of the owners of the goods. The ship's responsibility shall cease when the Goods are so discharged under quarantine, or landed at another safe Port, as expressed herein. The Master or Agent shall have a lien on the Goods for payments made or liabilities incurred in respect of any charges stipulated herein to be borne by the Owners of the Goods. In case any part of the within Goods cannot be found for delivery during the vessel's stay at the Port of Discharge, they are to be returned at Ship's expense but Shipper's risk, by first opportunity when found; the Steamer not to be held liable for any loss or claim for delay by such over-carriage.

AUSTRO-HUNGARIAN LLOYD'S STEAM NAVIGATION COMPANY.

Shipped in good order and condition by
in the Austro-Hungarian Lloyd's Steam Ship whereof is Commander for this present voyage
lying in the Port of and bound for
being marked and numbered as per margin, which are to be delivered at the Port of subject to the conditions hereinafter mentioned, or so near thereunto as she or other Steamer can safely get, from the Ship's deck, where the responsibility of the Company shall cease, in the like good order and condition (the Act of God, the Emperor's or Queen's Enemies, Restraint of Princes or Rulers, Pirates or Robbers by Sea or Land, Accidents, Loss or Damage from Vermin, Jettison, Barratry, Collision, Fire, Machinery, Boilers, Steam at Sea or on Shore, Inaccuracies, Obliteration or Absence of Marks, Numbers, Address or Description of Goods Shipped, and all the Perils, Dangers, and Accidents of the Seas, Rivers, and Steam Navigation of whatever nature and kind soever, and howsoever such Accident, Loss or Damage shall occur, whether it be from any act, neglect, or the fault of the Pilot, Master, or Mariners or other Servants employed in navigating the said Ship or in any way engaged in transhipping the said Goods or from any detention, loss or damage arising from any act of the Egyptian Government or its officers, or from any deviation whatsoever, excepted; with liberty to sail with or without pilots, or to tow and assist Vessels in all situations and circumstances, and to call and stay at any Port or Ports in or out of the usual course of the above Voyage, for any purpose whatever, and to land or lighter and store the said Goods, on shore or afloat, or to ship or tranship them into any other Steamer or Steamers on either side of the Isthmus, at the risk of the Shipper but at the expense of the Company above named, and the Company shall not be answerable for any consequences arising from delay so occasioned), unto
or Assigns on payment of Freight and Primage for the said Goods, in Cash, as per margin in Ship lost or not lost. Any consequences arising from restriction of quarantine, wheresoever and by whomsoever imposed, to be borne by the Shipper, who is also liable for all expenses incurred in transhipping or storing the Goods into quarantine, depôt, lazaretto, hulk, or lighter, for which the Company has a lien upon the Goods. Any responsibility arising from detention or wrong delivery to be borne by the Shipper, if the Goods be not plainly marked, both on the outer and inner packages, with the marks, numbers, port of destination, and other particulars required by the authorities of the port. In case of Blockade or Interdict of any Port or Ports of discharge, or if, without such Blockade or Interdict, the entering of any Port or Ports of discharge should be considered unsafe or undesirable, by reason of war, disturbance, quarantine, or bad weather, the Master to have the option of landing the Goods at any other Port which he may consider safe, at Shipper's risk and expense, and on the Goods being placed in the charge of any Mercantile Agent, and a letter being put in the Post Office addressed to the Shipper, and one to the Consignee, if named, stating the landing, and with whom deposited, the Goods to be at Shipper's risk and expense, and the Company discharged from all responsibility. Should the Goods not be taken delivery of by the Consignee or Assigns so soon as the Steam-ship is ready to discharge, they will be landed and warehoused, or lightered, and stored afloat, at the Port of destination, at the Merchant's risk and expense, and the Company are to have a lien on the Goods for such expense and for average accustomed. Weight, contents, and value unknown,

and not answerable for any leakage, breakage, or rust, or for any consequences arising therefrom, or the insufficiency of package.

In WITNESS whereof the undersigned, as Agent of the Austro-Hungarian Lloyd's Steam Navigation Company, hath affirmed to Bills of Lading, all of this tenor and date, one of which Bills of Lading being accomplished, and delivered up to the Company or their Agent, the others to stand void.

Dated in 188

The Goods are shipped and this Bill of Lading is issued subject to the following conditions :—

The Company do not guarantee that the Steamer shall have room at the ports of transhipment, or that there shall be no delay at such Ports.

A written Declaration of the Contents and Value of Goods is required by the Company, and must be delivered by the Shipper to the Company's Agents with the Bills of Lading. A wrong description of Contents or false declaration of Value shall release the Company from all responsibility, in case of loss, seizure, or detention; and the Goods shall be charged double freight on the real value, which freight shall be paid previous to delivery. The Company will not receive on board of its Vessels any Goods of a dangerous or damaging nature. If any such Goods be shipped without notice, the Shipper will not only be liable to the penalties imposed by statute, but also for all damages sustained in consequence of such shipment.

The Company and its Agents to have the option of delivering Goods to Consignee or his Agents, or into Receiving Ships at Port of Discharge, or landing them direct at Consignee's expense, and the Company to have a lien on the Goods for transhipping, landing and storing, or other expenses incurred, and the Goods to be at the Consignee's risk immediately on passing the Ship's side.

Specie will not be landed by the Company; it can only be delivered on presentation of Bills of Lading on board, and will be carried on at Consignee's risk if delivery is not taken during the Ship's stay in Port.

No Claim for any damage whatever will be admitted, unless such damage shall have been notified in writing before the Goods are removed.

No Claim for short delivery of, or damage done to, the Goods, and no other claim whatsoever shall be admitted, unless the same be made in writing to the Agent of the Company within One Calendar Month after the Goods have been discharged from the Ship, and all such claims must be made at the Port of Discharge, and at no other Port whatsoever; and the Goods are shipped, and this Bill of Lading is granted, subject to this express condition.

For the AUSTRO-HUNGARIAN LLOYD'S STEAM NAVIGATION COMPANY,

Agent.

EGYPTIAN TRADE (Receipt embodying terms of Bill of Lading).

To be returned to the Shipper.

SHIP'S RECEIPT.

Marks and Numbers to be filled up by the Shipper.

188

Received from

for Shipment on board the S. S.

for

On the terms of the Bills of Lading used for these Steamers as specified on the back hereof.

REMARKS

Officer.

This Receipt, stating correct quantity received, with remarks as to condition (if necessary), must be signed the moment the Goods are received into the Steamer, and to each lighter must be delivered a separate receipt.

Note.—On the back appear the following :-

"With liberty to call at any Port or Ports, in any rotation, in the Mediterranean, Levant, and Adriatic, or on the Coast of Africa, Spain, Portugal, Great Britain and Ireland, for the purpose of receiving and delivering Coals, Cargo, or Passengers, or for any other purpose whatsoever; to sail with or without Pilots; to tow and assist Vessels in all situations; and to carry Goods of all kinds, dangerous or otherwise."

"Being marked and numbered as overleaf; and, also, all Goods from intermediate Ports being specially marked upon each package by the Shipper, with the name of the Port of destination in letters not less than two inches long, in English characters, without which the owners are not to be held liable for correct delivery."

"The Act of God, the Queen's Enemies, Pirates, Thieves, Negligence, or Barratry of Master or Mariners, Restraint of Princes and Rulers, Fire, Damage from Machinery, Boilers or Steam, or from the consequence of any injury thereto, howsoever such damage or injury may be caused; damage from other Goods by contact, sweating, leakage, explosion or otherwise howsoever such damage or injury may be caused; and all damage from Collision or other Peril of the Seas, Rivers, or Navigation, of whatsoever nature or kind, and howsoever such Collision or other Peril may be caused, excepted."

Measure, quality, weight, contents, and value unknown, and not answerable for Leakage, Breakage, Rust, or Torn Bales. The Goods to be discharged from the Ship as soon as she is ready to unload, into Hulk, temporary Depôt, Lazaretto, or Hired Lighters, and Master Porterage to be done by the Agents of the Owners of the Vessel, at the Shipper or Consignee's risk and expense, after the Goods leave the Ship's deck. All fines and expenses, or losses by detention of Vessel or Cargo, caused by incorrect marking of the Packages, or by incomplete or incorrect description or weight (or of any other particulars required by the authorities of the Port of discharge), upon either the Packages or the Bill of Lading, shall be paid by the Shipper or Consignee of the Goods, and the Shipowner has a lien upon the Goods, until the payment of all such costs and charges. Ten pounds sterling per ton of 40 cubic feet will be charged on all Goods not correctly described.

In case of the Blockade or Interdict of the Port of Discharge, or if, without such Blockade or Interdict, the entering of the Port of Discharge should be considered unsafe, by reason of war or disturbances, the Master to have the option of landing the Goods at any other port which he may consider safe, at Shipper's risk and expense; and on the Goods being placed in charge of any Mercantile Agent, or of the British Consul, and a letter being put into the Post-Office, addressed to the Shipper and Consignee, if named, stating the landing and with whom deposited, the Goods to be at the Shipper's risk and expense, and the Master and Owners discharged from all responsibility.

All quarantine expenses upon the Goods, of whatever nature or kind, to be likewise paid by the Shippers or Consignees of the Goods.

In the event of Quarantine, the Goods to be discharged on arrival into Quarantine Depôt, Hulk, Lighter, or other Vessels necessary for the Ship's despatch, at the Consignee's risk and expense; or should this be impracticable, or the Vessel not admitted, the Master to have the option, and is hereby authorised, to land the Cargo at the nearest safe Port to which the Vessel is bound, at the risk and expense of the Consignees.

With liberty, in the event of the said Steamer putting back to Alexandria, or into any other port, or otherwise being prevented from proceeding in the ordinary course of her voyage to tranship the Goods by any other Steamer.

FRENCH MAIL SERVICE (with Insurance, if required).

Received in good order and well conditioned of
to be Shipped per French Steam Ship
Captain now lying
for transhipment into the French Mail Steamer, leaving Marseilles on the
and to be delivered, after safe arrival, at the Port of
unto M or Assigns.

Freight for the said Goods, as per margin, being paid first in London.

Freight			Marks.	Nos.	Number of Packages.	Declared Contents.	Weight or Measure.	Value.	Amount Insured.	Rate of Freight.
Insurance										
Total...										
Paid in										
Ex. of	per									

This Bill of Lading is issued subject to the conditions endorsed hereon, which are agreed to by the Shipper.

ART. 1.—The Captain shall not be held responsible for any consequences whatsoever arising from accidents of the seas or rivers, nor for loss, damage, or delay occasioned by fire, machinery, steam boilers, or vermin, the restraint of Princes or Rulers, the acts of Pirates or Robbers by sea or by land, jettison, barratry or collision; nor will the Captain be answerable for leakage or breakage, weight, contents or value, even when stated on the Bill of Lading.

ART. 2.—The Company do not hold themselves responsible for any neglect or default whatsoever on the part of the Captain, Pilot, or Mariners, or other servants of the Company.

ART. 3.—The port of delivery must be distinctly marked on every package, in addition to the usual shipping marks and numbers. The Company shall not be held responsible for damage arising from insufficient packing, nor for delay or wrong deliveries, caused by errors or omissions in marking and addressing the packages. The acceptance of packages by the Agents must not be taken as an admission of the solidity of the packing. Groups and valuables must be packed either in strong bags, with seams inside, and sealed on each seam, or in boxes sealed over tape in counter-sunk holes; in both cases the Bill of Lading must bear the same seal.

ART. 4.—Any person or persons shipping goods of a combustible, explosive, or inflammable nature, without giving a written notice to the Company, and signing a proper declaration besides the Bill of Lading, will be liable for all damages resulting from such shipments. The Captain is at liberty to accept or refuse such articles according to circumstances.

ART. 5.—Cargo will be loaded and unloaded by the means most convenient to the Captain or the Company, and in all cases at the expense and risk of its owners.

ART. 6.—At the ports of delivery, the Captain reserves to himself the privilege of either delivering on board the merchandize, groups or valuables, or of having them unloaded by the means he may choose, at the expense and risk of the shippers, owners, or consignees of the goods.

Notice need not be sent of the unloading of cargo, when done under the supervision of the Captain or other servants of the

Company; merchandize, groups, and valuables will be stored, according to circumstances, at the Custom-house, wharfs, public or private stores, or put on board another vessel, or sent to lazarettos in case of quarantine, always at the Merchant's expense and risk.

Goods will be delivered by the Captain, only on remittance of the Bill of Lading duly endorsed, after payment of the freight to the Agent and the latter's "visa."

ART. 7.—For groups and valuables, the responsibility of the Captain begins and ends on the deck of the ship.

ART. 8.—The Captain is at liberty to tranship goods at all times, even before starting, on board another vessel of the Company, or even any other vessel, and does not guarantee that there will be sufficient room on board the vessel on which the goods are transhipped. In case there should be no room, and until the merchandize, groups, or valuables are transhipped, they will be conveyed to stores and stored at the Company's expense, but at the owner's risk.

The owners or consignees will have no recourse against the Captain and the Company for delay resulting from the goods remaining at the port of transhipment.

ART. 9.—When on account of bad weather, or any unforeseen cause, of the necessities and exigencies of the mail service or itineraries of the Company, merchandize cannot be landed at the port of delivery, the Captain is authorized to transport it to one of the following ports on the line, whence it will be brought back by any convenient opportunity at the expense of the Company, but at the risk of the owners, without any indemnity being claimable by the shippers, owners, or consignees on account of delay.

ART. 10.—The Company's ships are at liberty to enter any ports, bays, roads or rivers, to sail with or without Pilots, deviate from their usual course, and to tow or assist vessels in any situation and in all circumstances.

ART. 11.—The Captain, when answerable for a loss, will be bound to reimburse; but the intrinsic value of merchandize, samples, groups, or valuables lost, without damages, and in case the value declared on the Bill of Lading is inferior to the real value of the articles, it will nevertheless be considered as the only true and valid one. When a delay in the delivery of Goods is chargeable to the Captain, he will be liable to damages only when prejudice is fully ascertained.

ART. 12.—The Captain is dispensed by the Shippers with inspection of stowage either at the ports of delivery, of shipment or of call, and in case an inspection of stowage should be deemed necessary, it will take place in or out of the presence of the shippers, owners or consignees, and without any legal proceedings.

ART. 13.—At Marseilles transhipping operations will be performed by the Company at their expense and shipper's risk.

ART. 14.—The forwarding of goods to places where the Company's steamers do not call at, will be done through their Agents, at the expense and risk of the consignees, even in case the Bill of Lading mentions only the place of ultimate delivery. The Company's responsibility will end as soon as the goods are delivered to the forwarding Agents.

ART. 15.—The Company reserve to themselves the right of having the weight, value, and contents of packages ascertained at the port of delivery; and in case of false statement, double freight will be claimed on groups, valuables and other merchandize.

ART. 16.—Freight on all merchandize and valuables stated on this Bill of Lading, is due and payable to the Company even in case of shipwreck.

ART. 17.—This Bill of Lading is to be signed by the Shipper; but the above conditions to hold good with or without the Shipper's signature.

INSURANCE.

The Shipper requests that the aforesaid goods be insured against sea risk from LONDON, to
in the sum of on the within goods, value agreed to by mutual consent, and subscribes to the terms and conditions of the Company's open policies of insurance of which he has full knowledge.

The AGENT of the Company, under authority from the underwriters of said open policies, hereby declares M
to have insured the above mentioned goods in the sum of subject to the terms and conditions of the aforesaid open policies.

In Witness whereof the Captain of the said Steam-Ship hath affirmed to THREE Bills of Lading all of this tenor and date, one of which being accomplished the others to stand void.

Dated in this day of 188 .

ITALIAN MAIL SERVICE (Rubattino Line).

Received in good order and well conditioned of M_____

To be Shipped per Screw Steamer_____

Captain_____now lying in

or transhipment into the Italian Mail Steamer,_____leaving _____on _____

_____and to be delivered, after safe arrival, at the Port of_____

unto M_____or Assigns.

Freight for the said Goods, as per margin, being paid in London, in cash, on delivery of Bills of Lading.

	£	s.	d.	Marks.	Nos.	No. of Packages.	Declared Contents.	Weight or Measure.	Value.	Amount Insured.	Rate of Freight.
Freight	...	...	...								
Primage 10 per cent.....	...	...	...								
Insurance	...	...	...								
Shipping Charges.....	...	...	...								
Total.....	...	...	...								

This Bill of Lading is issued subject to the conditions endorsed hereon, which are agreed to by the Shipper.

ART. 1.—The Captain shall not be held responsible for any consequences whatsoever arising from accidents of the seas or rivers, nor for loss, damage or delay occasioned by fire, machinery, steam boilers or vermin, the restraint of princes or rulers, the acts of pirates or robbers by sea or by land, jettison, barratry or collision; nor will the Captain be answerable for leakage or breakage, weight, contents or value, even when stated on the Bill of Lading.

ART. 2.—The Company do not hold themselves responsible for any neglect or default whatsoever on the part of the Captain, Pilot or Mariners, or other servants of the Company.

52 ART. 3.—The port of delivery must be distinctly marked on every package, in addition to the usual shipping marks and numbers. The Company shall not be held responsible for damage arising from insufficient packing, nor for delays or wrong deliveries, caused by errors or omissions in marking and addressing the packages. The acceptance of packages by the Agents must not be taken as an admission of the solidity of the packing. Valuables only received by special agreement.

ART. 4.—Any person or persons shipping goods of a combustible, explosive, or inflammable nature, without giving a written notice to the Company, and signing a proper declaration besides the Bill of Lading, will be liable for all damages resulting from such shipments. The Captain is at liberty to accept or refuse such articles according to circumstances.

ART. 5.—At the port of delivery, the Captain reserves to himself the privilege of either delivering on board the merchandize, or of having them unloaded by the means he may choose, at the expense and risk of the shippers, owners or consignees of the goods.

ART. 6.—The Captain is at liberty to tranship goods at all times, even before starting, on board another vessel of the Company. or even any other vessel, and does not guarantee that there will be sufficient room on board the vessel on which the goods are transhipped. In case there should be no room, and until the merchandize is transhipped, they will be conveyed to stores and stored at the Company's expense, but at the owner's risk.

The owners or consignees will have no recourse against the Captain and the Company for delay resulting from the goods remaining at the port of transhipment.

ART. 7.—The Company's ships are at liberty to enter any ports, bays, roads or rivers, to sail with or without Pilots, deviate from their usual course, and to tow or assist vessels in any situation and in all circumstances.

ART. 8.—At Genoa transhipping operations will be performed by the Company at their expense and shipper's risk.

ART. 9.—Freight on all merchandise stated on this Bill of Lading is due and payable to the Company even in case of loss of steamer.

In Witness whereof the Agents of Messrs. R. RUBATTINO & Co., have affirmed to Bills of Lading all of this tenor and date, one of which being accomplished the others to stand void.

Dated in this , day of 18 .

For R. RUBATTINO & Co.

As Agents.

EASTERN TRADE BILL OF LADING OUTWARDS, Form B.—Via "SUEZ CANAL."

(Showing differences between Forms A, B, and C.)

Shipped in good order and condition, by
on board the Steam Ship whereof is Master for this present voyage lying in the Port of LONDON, and bound for *viâ the Suez Canal*, with liberty to discharge and receive goods and passengers at and to take in Coal or other necessary supplies at any intermediate port or ports, to sail with or without Pilots, and to tow and assist vessels in all situations of distress (*a*)
being marked and numbered as per margin, and to be delivered, subject to the exceptions and conditions hereinafter mentioned, in the like good order and condition from the ship's tackles (the ship's responsibility commencing when taken in from a lighter, when the goods are over the ship's deck, level with the rail, and ceasing, when delivering into lighter, when the goods are over the ship's side level with the rail,) at the aforesaid Port of or so near thereto as she may safely get, unto or to his or their Assigns. Freight for the said goods and primage (if any) to be paid by the shippers in LONDON, on delivery of the Bills of Lading, in cash without deduction, ship lost or not lost. Average as accustomed.

The following are the exceptions and conditions above referred to:

Weight, measure, quality, contents, and value unknown.

The Act of God: the Queen's Enemies; pirates: robbers by land or sea; restraint of princes, rulers, or people; loss or damage from machinery, boilers or steam, or from explosion, heat, or fire on board, in hulk or craft, or on shore; jettison; barratry; any act, neglect, or default whatsoever, of Pilots, Master, or Crew in the management or navigation of the ship; and all and every the dangers and accidents of the seas, rivers and canal, and of navigation of whatever nature or kind are excepted.

The ship is not liable for insufficient packing, torn or chafed wrappers, or reasonable wear and tear of packages; for inaccuracies, obliteration or absence of marks, or countermarks, numbers, address or description of goods shipped; leakage; breakage; loss or damage from dust by coaling on the voyage, sweat; rust; decay. Fines and expenses and losses by detention of ship or cargo, caused by incorrect marking, or by incomplete or incorrect description of contents or weight, or of any other particulars required by the authorities at the port of discharge, upon either the packages or bills of lading, shall be borne by the owners of the goods.

The Steamer, while detained at any port for the purpose of coaling, is at liberty to discharge and receive goods and passengers.

The owners of this Steamer will not be accountable for Gold, Silver, Bullion, Specie, Jewellery, Precious Stones, Silk Goods, Quinine or Precious Metals, or beyond the amount of Fifty Pounds for any one package, or relatively for any portion thereof, unless shipment be made upon a special shipping order, containing a declaration of the value, and the bills of lading are signed in accordance therewith.

If medicinal fluids, or any other goods of an inflammable, damaging or dangerous nature are Shipped without being previously declared and arranged for, they are liable, upon discovery, to be thrown overboard, and the loss will fall upon the Shippers or owners of such fluids or goods, as well as any damage caused to the Steamer or other cargo on board of her.

The goods are to be discharged from the ship as soon as public intimation is given that she is ready to unload, and if not thereupon removed without delay by the consignee, the master or agent is to be at liberty to land the same, or, if necessary, to discharge into hulk, lazaretto, or hired lighters, at the risk and expense of the owners of the goods.

In case of quarantine, the goods may be discharged into quarantine depôt, hulk, or other vessel, as required for the ship's despatch. Quarantine expenses upon the goods, of whatever nature or kind, shall be borne by the owners of the goods.

In case of the blockade or interdict of the port of discharge, or if the entering of, or discharging in, the port shall be considered by the master unsafe by reason of war or disturbances, the master may land the goods at the nearest safe and convenient port, at the expense and risk of the owners of the goods; and the ship's responsibility shall cease when the goods are so discharged into proper and safe keeping, the master giving immediate notice of the same to the consignees of the goods, so far as they can be ascertained.

The master or agent shall have a lien on the goods for payments made, unpaid freights, or liabilities incurred in respect of any charges stipulated herein to be borne by the owners of the goods.

In case any part of the within goods cannot be found during the Ship's stay at the port of destination, they are when found to be sent back by first Steamer at the Ship's risk and expense, and subject to any proved claim for loss of market.

The ship shall not be liable for incorrect delivery unless each package shall have been distinctly marked by the shippers before shipment with the name of the port of destination.

If prevented from discharging by weather, the goods may be taken on to the next convenient port for transhipment to their destination at the expense of the vessel, but at the risk of the Merchant (*b*).

In the event of claim for short delivery, price to be the market price of the day at port of discharge on the day of the Steamer's reporting at the Custom House, less charges and brokerage.

In Witness whereof the master or agent of the said ship has signed Bills of Lading, exclusive of the Master's copy, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated at London this day of 18

(*a*) In Form C the following transhipment clause is here inserted:—" The goods to be transhipped at the expense of the vessel, but at the risk of the merchant into a Steamer bound to. "

(*b*) This clause is omitted in Forms A and C.

EASTERN TRADE HOMEWARDS.

Commonly used at the Rice Ports, Calcutta, Ceylon, Malabar Coast, Bombay, and Kurrachee (showing alterations usual at Madras and the Coromandel Coast, and in the British India Steam Navigation Company's forms).

Shipped in good order and condition, by on board the Steam Ship whereof is Master for this present voyage lying in the Port of and bound for *via the Suez Canal*, with liberty to discharge and receive goods and passengers at and to take in coal or other necessary supplies at any intermediate port or ports, to sail with or without pilots, and to tow and assist vessels in all situations of distress, being marked and numbered as per margin; and to be delivered, subject to the exceptions and conditions hereinafter mentioned, in the like good order and condition from the ship's tackles (where the ship's responsibility shall cease) at the aforesaid Port of or so near thereunto as she may safely get, unto or to his or their assigns. Freight for the said goods at and after the rate of per ton of delivered is to be paid subsequent to the landing thereof by cash in London not later than thirty days after the ship's reporting at the Custom House, or upon any earlier day on which a freight release may be required and received by the consignee.

The following are the exceptions and conditions above referred to :—

Weight, measure, quality, contents, and value unknown.

The Act of God; the Queen's enemies; pirates; robbers by land or sea; restraint of princes, rulers, or people; loss or damage from machinery, boilers or steam, or from explosion, heat, or fire on board, in hulk or craft, or on shore; jettison; barratry; any act, neglect, or default whatsoever of Pilots, Master, or Crew in the management or navigation of the ship; and all and every the dangers and accidents of the seas, rivers and canal, and of navigation of whatever nature or kind, are excepted.

The ship is not liable for insufficient packing or reasonable wear and tear of packages; for inaccuracies, obliteration or absence of marks, numbers, address, or description of goods shipped; leakage; breakage; loss or damage by dust from coaling on the voyage; sweat; rust; decay. Fines and expenses, and losses by detention of ship or cargo, caused by incorrect marking, or by incomplete or incorrect description of contents or weight, or of any other particulars required by the authorities at the port of discharge, upon either the packages or bills of lading, shall be borne by the owners of the goods.

The Steamer while detained at any port for the purpose of coaling is at liberty to discharge and receive goods and passengers.

The owners of this Steamer will not be accountable for Gold, Silver, Bullion, Specie, Jewellery, Precious Stones, or Precious metals, or beyond the amount of One Hundred Pounds for any one package, unless the Bills of Lading are signed for such goods and the value declared therein.

If medicinal fluids, or any other goods of an inflammable, damaging, or dangerous nature are shipped without being previously declared and arranged for, they are liable, upon discovery, to be thrown overboard, and the loss will fall upon the Shippers or Owners of such fluids or goods.

One clear working day after the day on which the ship reports at the Custom House and is docked, is to be allowed for applications for delivery; and if thereafter the goods are not removed without delay by the consignee, the master or agent is to be at liberty to land and warehouse the same, or, if necessary, to discharge into hired lighters, at the risk and expense of the owners of the goods.

In case of quarantine, the goods may be discharged into quarantine depôt, hulk, or other vessel, as required for the ship's despatch. Quarantine expense upon the goods, of whatever nature or kind, shall be borne by the owners of the goods.

In case of the blockade or interdict of the port of discharge, or if the entering of or discharging in the port shall be considered by the master unsafe by reason of war or disturbances, the master may land the goods at the nearest safe and convenient port, at the expense and risk of the owners of the goods, and the ship's responsibility shall cease when the goods are so discharged into proper and safe keeping, the master giving immediate notice of the same to the consignees of the goods, so far as they can be ascertained.

The master or agent shall have a lien on the goods for payments made or liabilities incurred in respect of any charges stipulated herein to be borne by the owners of the goods.

IN WITNESS whereof the master or agent of the said ship has signed bills of lading exclusive of the Master's copy, all of this tenor and date, one of which being accomplished the others to stand void.

Dated at 188

Note.—The B. I. S. N. Co.'s Bills of Lading in addition to the above contain the following clause:—

Shippers are requested to note particularly the terms and conditions of this Bill of Lading with reference to the validity of their insurance upon their goods.

Shippers are cautioned against shipping of goods of a dangerous or damaging nature, as by so doing they become responsible for all consequential damage, and also render themselves liable to penalties imposed by statute.

In the Madras and Coromandel Coast Form the following clauses are added:—

The Owners or their Agents shall have the option of making delivery of the goods under this Bill of Lading either over the ship's side or from Lighters or a Store Ship or Custom House or Warehouse at Merchant's risk.

The Owners or their Agents are to be at liberty to carry the said Goods to their Port of Destination by the above or other Steamer or Steamers, Ship or Ships, either belonging to them or to other persons proceeding either directly or indirectly to such Port, and in so doing to carry the Goods beyond their Port of Destination, and to tranship or land and store the Goods either on shore or afloat, and re-ship and forward the same at their expense, but at Merchant's risk.

The goods to be taken from the Steamer as soon as she is ready to discharge at the Merchant's risk and expense, or the Captain may land them at the expense and risk of Consignees.

Consignees or their Agents must be ready to take delivery of Goods within 24 hours of the vessel being entered at the Custom House, otherwise the Owners or their Agents shall be at liberty to land and warehouse or discharge them into a Store Ship or Warehouse or Custom House at the Merchant's risk and expense and shall have a lien thereon for such expense.

PENINSULAR AND ORIENTAL STEAM NAVIGATION COMPANY'S Form (without Insurance).

Shipped in good order and well-conditioned by
in the Peninsular and Oriental Steam Navigation Company's Steam Ship
whereof is Commander for this present Voyage
and now riding at Anchor in
being marked and numbered as in the margin and to be delivered subject to the exceptions and conditions at foot hereof in the like good order and well-conditioned at the Port of
unto
or to his or their Assigns on Freight for the said Goods being paid in by the Shippers as per margin Ship lost or not lost. IN WITNESS whereof the Commander of the Ship hath affirmed to
Bills of Lading all of this tenor and date one of which being accomplished the others to stand void.

Dated in 188

The following are the Exceptions and Conditions above referred to :—

Weight Measure Contents and Value unknown.

The Act of God the Queen's Enemies restraint of Princes Rulers or Peoples restriction of Quarantine Pirates Robbers or Thieves by Sea or Land Accidents Loss or Damage from Vermin Barratry Fire Jettison Collision Machinery Boilers Steam and all Perils Dangers and Accidents of the Seas Rivers Land Carriage and Navigation of what kind soever and accidents loss damage delay or detention from any act or default of the Egyptian Government or the Administration of the Suez Canal or arising out of or consequent upon the employment of the Company's Vessels in Her Majesty's Mail Service or any act neglect or default whatsoever of the Pilot Master Mariners or other Servants of the Company or from transhipment or warehousing or from obliterations of marks or numbers or from leakage breakage insufficiency of packages or sweat or rust or injurious effects of other Goods or from Ships not having room at Port of Transhipment are all excepted.

The Ships are to be at liberty to sail with or without Pilots and to tow and assist Vessels in all situations and also to deviate from the Voyage for any purpose or to touch and stay at other Ports either in or out of the way.

A written Declaration of the Contents and Value of Goods must be delivered by the Shippers to the Company with the Bills of Lading and an untrue Declaration shall release the Company from all responsibility and shall entitle the Company to charge double Freight on the real value.

All Goods must be distinctly marked with the Marks Numbers and Port of Destination otherwise the Company will not be responsible for detention or mis-delivery.

The Company shall have the option of making delivery of Goods either over the Ship's side or from Lighters or a Store Ship or Hulk or Custom House or Warehouse at Merchant's risk.

Consignees or their Assigns must be ready to take delivery of Goods as soon as the Ship is ready to discharge them otherwise the Company shall be at liberty to land and warehouse or discharge them into a Store Ship or Hulk at the Merchant's risk and expense and shall have a lien thereon for such expense.

Specie deliverable in London will be landed at Southampton and forwarded by Railway to London and conveyed to the Bank of England at the Company's expense but at the Merchant's risk. All liability of the Company is to cease so soon as the Specie is free from the Ship's tackles.

The Company are to be at liberty to carry the said Goods to their Port of Destination by the above or other Steamer or Steamers Ship or Ships either belonging to the Company or to other persons proceeding either directly or indirectly to such Port and in so doing to carry the Goods beyond their Port of Destination and to tranship or land and store the Goods either on shore or afloat and reship and forward the same at the Company's expense but at Merchant's risk.

In cases where the ultimate destination at which the Company may have engaged to deliver Goods is other than the Steamer's Port of Discharge the Company reserve the right to forward such Goods by Rail. The Company act as forwarding Agents only from that Port and in all cases the liability of the Company on account of all Goods is to cease as soon as the Goods are free from the Ship's tackles.

Goods carried on deck are carried solely at the Merchant's risk.

Not accountable for Money Documents Gold Silver Bullion Jewellery or Precious Stones unless Bills of Lading are signed therefor and the Value therein expressed.

Any claim that may arise in respect of Goods shipped by the Company's Steamers must be made at the Port of Delivery.

Note.—The following clauses appear in the margin :—

Shippers are requested to note particularly the terms and conditions of this Bill of Lading with reference to the validity of their insurance upon their Goods.

Shippers may by paying a higher rate of freight ship their goods under Bill of Lading (known as the Red Bill of Lading) under which the Company take responsibilities not imposed by this Form.

Shippers are cautioned against shipping of goods of a dangerous or damaging nature as by so doing they become responsible for all consequential damage and also render themselves liable to penalties imposed by Statute.

PENINSULAR AND ORIENTAL STEAM NAVIGATION COMPANY'S Form (with Insurance).

Shipped in good order and well-conditioned by
in the Peninsular and Oriental Steam Navigation Company's Steam Ship
whereof is Commander for this present Voyage
and now riding at Anchor in
being marked and numbered as in the margin and to be delivered subject to the exceptions and conditions at foot hereof but not to any other exceptions in the like good order and well-conditioned at the Port of
unto
or to his or their Assigns on Freight for the said Goods and an additional Freight of per cent.
on the value declared by the
Shippers in the margin to be the value of the said Goods being paid in by the Shippers
as per margin Ship lost or not lost. IN WITNESS whereof the Commander of the Ship hath affirmed to
Bills of Lading all of this tenor and date one of which being accomplished the others to stand void.

Dated in 188

The following are the Exceptions and Conditions above referred to :—

Weight Measure and Contents unknown.

The restriction of Quarantine Accidents Loss or damage from delay or detention from any act or default of the Egyptian Government or the Administration of the Suez Canal or arising out of or consequent upon the employment of the Company's Vessels in Her Majesty's Mail Service or from obliterations of marks or numbers or from leakage breakage insufficiency of packages or sweat or rust or injurious effects of other Goods or from Ships not having room at Port of Transhipment are all excepted.

The Ships are to be at liberty to sail with or without Pilots and to tow and assist Vessels in all situations and also to deviate from the Voyage for any purpose and to touch and stay at other ports either in or out of the way.

A written Declaration of the Contents and Value of Goods must be delivered by the Shippers to the Company with the Bills of Lading and an untrue Declaration shall release the Company from all responsibility and shall entitle the Company to charge double Freight on the real value.

Not accountable for Money Documents Gold Silver Bullion Jewellery or Precious Stones unless Bills of Lading are signed therefor and the value therein expressed.

All Goods must be distinctly marked with the Marks Numbers and Port of Destination otherwise the Company will not be responsible for detention or mis-delivery.

The Company shall have the option of making delivery of Goods either over the Ship's side or from Lighters or a Store Ship or Hulk or Custom House or Warehouse.

Consignees or their Assigns must be ready to take delivery of Goods as soon as the Ship is ready to discharge them otherwise the Company shall be at liberty to land and warehouse or discharge them into a Store Ship or Hulk at the Merchant's expense and shall have a lien thereon for such expense.

Specie deliverable in London will be landed at Southampton and forwarded by Railway to London and conveyed to the Bank of England at the Company's expense. All liability of the Company is to cease so soon as the Specie is delivered at the Bank of England.

The Company are to be at liberty to carry the said Goods to their Port of Destination by the above or other Steamer or Steamers Ship or Ships either belonging to the Company or to other Persons proceeding either directly or indirectly to such Port and in so doing to carry the Goods beyond their Port of Destination and to tranship or land and store the Goods either on shore or afloat and reship and forward the same at the Company's expense.

In cases where the ultimate destination at which the Company may have engaged to deliver Goods is other than the Steamer's Port of Discharge the Company reserve the right to forward such Goods by Rail. The Company act as forwarding Agents only from that Port and in all cases the liability of the Company on account of all Goods is to cease as soon as the Goods are free from the Ship's tackles.

Any claim that may arise in respect of Goods shipped by the Company's Steamers must be made at the Port of Delivery.

The Company are not responsible for Captures or Seizures lawful or unlawful or for arrests restraints or detainments of Kings Princes Governors or People of what nature condition or quality whatsoever or for the consequences thereof or any attempt thereat.

Warranted free from particular average unless the Ship be stranded sunk or burnt. Grounding in the Canal is not to be deemed a strand within the meaning of this Bill of Lading.

The Company are in no case to be responsible for a greater sum than that declared in the margin by the Shippers to be the value of the Goods on which additional Freight has been paid which as between the Shippers and the Company is by agreement to be considered the true value of the Goods as in Marine Insurance.

Subject to the above conditions and exceptions the Company will settle all losses without abatement but before payment the claimant is to furnish if required such proof of value as is usually demanded by the London Insurance Offices before settling claims and all average losses and like matters claimed are to be adjusted according to the established practice of the London Insurance Offices.

Note.—The following are inserted in the margin :—

This Bill of Lading is issued at an *ad valorem* freight whereby the Company take risks upon themselves.

N. B.—A Form of Bill of Lading at a lower freight under which risks are borne by the Shippers is also issued.

It is at the option of the Shippers which form they adopt.

Shippers are cautioned against shipping goods of a dangerous or damaging nature as by so doing they become responsible for all consequential damage and also render themselves liable to penalties imposed by Statute.

Port at which Payable.

at Ex. of

Value declared by the Shippers on which additional freight is paid.

Form for F. P. A. Risks.

Freight.

Additional Freight.

Total.

BRITISH INDIA STEAM NAVIGATION COMPANY, "LIMITED," (For transhipment to P. & O. Co.

Shipped, in good order and well-conditioned, by

in the Steam Ship whereof is Commander for this present Voyage

and now lying in

and bound for and intermediate Ports

being marked and numbered as in the margin, and are to be carried and delivered subject to the Conditions after mentioned; including those at the foot of this Bill of Lading, in the like good order and well-conditioned at the Port of (The Act of God, the Queen's Enemies, Restraint of Princes or Rulers, Pirates, or Robbers by Sea or Land, accidents, loss, and damage from Vermin, Barratry, Jettison, Collision, Fire, Machinery, Boilers, Steam, and all the perils, dangers, and accidents of the Sea, Rivers, Land Carriage, and Steam Navigation of whatsoever nature and kind soever; quarantine, loss, damage, delay or detention from any act of the Egyptian Government, or Transit administration or arising out of or consequent on the employment of the Vessels carrying the Mails and accidents, loss or damage from any act, neglect or default whatsoever of the Pilot, Master or Mariners, or other Servants of either Company, in navigating the Ship, or from any deviation, or from transhipment or warehousing or from obliteration of marks or numbers, rust injurious effects of other Goods or from Ships not having room at Port of transhipment excepted; with liberty to sail with or without Pilots, and tow and assist Vessels in all situations and circumstances; and for either Company at any time or times during the voyage to tranship the said Goods into any other Steamer; and for that purpose, and until a Steamer is ready to carry on the said Goods, to land and store the same either on shore or afloat; such transhipment and storing being at the Company's expense, but at the Merchant's risk; with liberty also at the like risk to deviate for any purpose from above voyage, and to call and stay at any Ports or Places whether in or out of the usual course of the voyage, and in any order and for any purpose, or at any time whatsoever) unto or to his or their assigns. Freight for the said Goods at the rate of paid in by the Shippers as per margin, Steam Ship lost or not lost. In Witness whereof the Commander or Agents of the said Steam Ship have affirmed to Bills of Lading, all of this tenor and date; one of which Bills of Lading being accomplished the others to stand void.

Dated at on 18

This Bill of Lading is issued subject to the following Conditions:—

Weight, Contents and Value when Shipped unknown. Neither Company is to be responsible for leakage or breakage, or other consequence arising from the insufficiency of the address or package; or for damage, leakage or breakage to re-exported Goods.

The Company reserves the right of charging freight by weight, measurement or value, and of re-measuring or re-weighing the same, and charging freight accordingly before delivery.

The Company does not guarantee that the Steamers shall have room at Ports of transhipment, or that there shall be no delay there.

Packages weighing more than 3 cwt. (excepting bales and boxes of manufactured Goods) are only carried at advanced rates of freight and by special agreement.

In case it be necessary to detain and store the Goods, it shall be done at the Company's expense, but at the Merchant's risk; but the Company is not to be answerable for any delay so occasioned.

When, owing to bad weather or other causes, the Goods cannot be safely landed at their destination within the time stipulated for

☞ The above Goods are shipped and this Bill of Lading is accepted by the Shippers subject to the express condition that the Commander and Owners of the Vessel are not answerable for consequences arising from difference, variation, or erasure of marks. That claims for short delivery if any as well as every and all other claim or claims whatsoever, against the vessel must be made within three months from the date of this Bill of Lading, at the Port of and at no other Port, and no such claim or claims will be entertained or admitted unless supported by certificates signed by the Commander of the Vessel before leaving the Port of Discharge.

If Medicinal fluids or any other Goods of an inflammable, damaging or dangerous nature are shipped without being previously declared or arranged for, they are liable upon discovery to be thrown over board, and the loss will fall upon Shippers or Owners of such fluids or goods, as well as any damage caused to the Steamer, or other cargo on board of her.

The Master or Agent shall have a lien on the goods for unpaid freights.

☞ That Optional Opium will be taken on to China at the risk and expense of the Consignees if not applied for within three hours after arrival.

Weight, Contents, and Value unknown, and not answerable for short weight or for consequences arising from breakage of packages or bursting of bales or from insufficiency of address or package, causing the Goods either to be landed at an intermediate Port, or taken on to

It is optional with the Steamer's Agents to land the goods at the risk and expense of the Consignees.

In Witness whereof Commander or Agents of the said ship hath affirmed to Bills of Lading, all of this tenor and date, the one of which Bills being accomplished, the others to stand void.

Not Accountable for Countermarks.

Dated in 188

FREIGHT Rs.

EAST INDIA COUNTRY (or intermediate) TRADE.

Shipped in good order and well conditioned by in
the Screw Steam Ship
whereof is Master for this present Voyage, and now riding at Anchor
in and bound for
with liberty to call at any Port or Ports

being marked and numbered as in the margin, and are to be delivered in the like good order and well conditioned at the aforesaid Port of
(The act of God, the Queen's Enemies, Restraint of Princes or Rulers, Pirates or Robbers by Sea or Land, Accidents, Loss and Damage from Vermin, Jettison, Barratry, Collision, Fire, Machinery, Boilers, Steam, and all the Perils, Dangers, and Accidents of the Seas, Rivers and Steam Navigation, of whatever nature and kind soever, and Accidents Loss or Damage from any Act, Neglect, or Default whatsoever of the Pilot, Master or Mariners, or other Servants of the Owners in navigating the ship, or from any deviation, excepted; with liberty to sail with or without Pilots, and tow and assist Vessels in all situations and circumstances, and for the Steamer at any time or times during the Voyage to tranship the said Goods into any other Steamer, and for that purpose and until a Steamer is ready to carry on the said Goods to land and store the same, either on shore or afloat, such transhipment and storing being at the Owner's expense, but at the Merchant's risk; with liberty also at the like risk to deviate for any purpose from the above Voyage and to call and stay at any Ports or Places whether in or out of the usual course of the above Voyage, and in any order and for any purpose or at any times whatsoever) unto
or to Assigns, Freight for the said goods being paid in by the Shippers as per margin, Ship lost or not lost. To be taken from the Ship's side by the Consignees or by the Ship's Agents, but at the risk and expense of the Consignees immediately after the Vessel's arrival, or transferred at like risk to the Receiving Ship in
or landed and stored.

☞ The above Goods are shipped and this Bill of Lading is accepted by the Shippers subject to the express condition that the Commander and Owners of the Vessel are not answerable for consequences arising from difference, variation, or erasure of marks. That claims for short delivery if any as well as every and all other claim or claims whatsoever, against the vessel must be made within three months from the date of this Bill of Lading, at the Port of and at no other Port, and no such claim or claims will be entertained or admitted unless supported by certificates signed by the Commander of the Vessel before leaving the Port of Discharge.

If Medicinal fluids or any other Goods of an inflammable, damaging or dangerous nature are shipped without being previously declared or arranged for, they are liable upon discovery to be thrown over board, and the loss will fall upon Shippers or Owners of such fluids or goods, as well as any damage caused to the Steamer, or other cargo on board of her.

The Master or Agent shall have a lien on the goods for unpaid freights.

☞ That Optional Opium will be taken on to China at the risk and expense of the Consignees if not applied for within three hours after arrival.

Weight, Contents, and Value unknown, and not answerable for short weight or for consequences arising from breakage of packages or bursting of bales or from insufficiency of address or package, causing the Goods either to be landed at an intermediate Port, or taken on to

It is optional with the Steamer's Agents to land the goods at the risk and expense of the Consignees.

In Witness whereof Commander or Agents of the said ship hath affirmed to Bills of Lading, all of this tenor and date, the one of which Bills being accomplished, the others to stand void.

Not Accountable for Countermarks.

Dated in 188

FREIGHT Rs.

ANCHOR LINE AND HALL LINE.

Shipped in good order and condition by on board the Steam Ship whereof is master for this present voyage lying in the Port of and bound for *viâ the Suez Canal*, with liberty to call at any Port or Ports, in any order for the purpose of receiving and delivering Coals, Cargo, or Passengers, or for any other purposes whatever to sail with or without Pilots, and to tow and assist vessels in all situations.

being marked and numbered as per margin ; and to be delivered, subject to the exceptions and conditions hereinafter mentioned, in the like good order and condition from the ship's tackles (where the ship's responsibility shall cease) at the aforesaid Port of or as near thereto as she may safely get, unto
or to his or their assigns on payment of Freight for the said goods in cash as per margin, in . Average as accustomed.

The following are the exceptions and conditions above referred to :—

Weight, measure, quality, contents and value unknown.

The act of God; the Queen's enemies; pirates; robbers by land or seas; restraint of Princes; Rulers or people; loss or damage from machinery, boilers or steam, or from explosion, heat or fire on board, in hulk or craft, or on shore; jettison; barratry; any act, neglect or default whatsoever of Pilots, Master, or Crew in the management or navigation of the ship; and all and every the dangers and accidents of the seas, rivers, and canal and of navigation of whatever nature or kind, are excepted.

The ship is not liable for insufficient packing, or reasonable wear and tear of packages; for inaccuracies, obliteration or absence of marks, numbers, address, or description of goods shipped; leakage; breakage, loss or damage by dust from coaling on the voyage; sweat; rust; decay. Fines and expenses and losses by detention of ship or cargo, caused by incorrect marking or by incomplete or incorrect description of contents or weight, or of any other particulars required by the authorities at the port of discharge, upon either the packages or Bills of Lading, shall be borne by the owners of the goods.

The Steamer while detained at any port for the purpose of coaling is at liberty to discharge, and receive goods and passengers.

The owners of this Steamer will not be accountable for Gold, Silver, Bullion, Specie, Jewellery, Precious Stones, or Precious Metals, or beyond the amount of One Hundred Pounds for any one package, unless the Bills of Lading are signed for such goods, and the value declared therein.

If medicinal fluids, or any other goods of an inflammable, damaging, or dangerous nature are shipped without being previously declared and arranged for, they are liable, upon discovery, to be thrown overboard, and the loss will fall upon the Shippers or Owners of such fluids or goods.

Should the Goods not be taken delivery of by the consignees or assigns as soon as the Steam-Ship is ready to discharge, they will be landed and warehoused at the Port of destination at the risk and expense of the owners of the goods.

The Shipowners shall have the option of discharging into lighters in the River at Merchant's risk.

In case where the ultimate destination at which the Shipowners may have engaged to deliver the Goods is beyond their Port of Discharging, they act as forwarding Agents only from that Port, and in all cases the liability of the Shipowners on account of all Goods is to cease as soon as the Goods are free from the tackles of the Ship.

In case of quarantine, the Goods may be discharged into quarantine depôt, hulk, or other vessels, as required for the ship's despatch. Quarantine expenses upon the goods, of whatever nature or kind, shall be borne by the owners of the goods.

In case of the blockade or interdict of the port of discharge or if the entering of or discharging in the port shall be considered by the master unsafe by reason of war or disturbances, the master may land the goods at the nearest safe and convenient port, at the expense and risk of the owners of the goods; and the ship's responsibility shall cease when the goods are so discharged into proper and safe keeping, the master giving immediate notice of the same to the consignees of the goods, so far as they can be ascertained.

The master or agent shall have a lien on the goods for payments made or liabilities incurred in respect of any charges stipulated herein to be borne by the owners of the goods.

The ship shall not be liable for incorrect delivery unless each package shall have been distinctly marked by the shippers before shipment with the name of the port of destination.

In Witness whereof the Master or Agents of the said Ship has signed Bills of Lading, exclusive of the Master's copy, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated at 188

NOT ACCOUNTABLE FOR NUMBERS AND COUNTERMARKS.

WEST AFRICA, MADEIRA, TENERIFFE AND CANARY ISLANDS TRADES.

Shipped in good order and condition by
in and upon the Steam-ship called the whereof is Master
for this present Voyage, or whosoever else may go as Master in the said Ship, and now lying in the Port of
and bound for with liberty to call at any Ports or Places, in or out of the
customary or advertised route, in any order, and for any purpose ; to go into Graving Dock, with cargo on board ; to carry goods of all kinds, dangerous or otherwise ; substitute, or tranship the Goods by any other Steamer, before the commencement of, or at any period of the Voyage ; to sail with or without pilots, and to tow and to be towed when necessary, to deviate from her course, and assist vessels in all situations
being marked and numbered as per margin, and to be delivered subject to the terms and conditions stated in this Bill of Lading, which constitute the Contract between the Shippers and the Company in the like good order and condition, into Boats or Craft alongside at the aforesaid Port or Place of or so near thereto as she can safely get, after which delivery the Steamer's liability shall cease, and that whether Bill of Lading be exchanged or not (the Act of God, of the Queen's Enemies, Pirates, Robbers, or Thieves, Restraints of Princes, Rulers, or People and loss or damage resulting from any of the following causes or Perils, excepted, viz :—Insufficiency in packing or in strength of packages, Rust, Breakage, Leakage, Sweating, Evaporation or Natural Decay ; Vermin, Rain or Spray ; Contact with, Smell or Evaporation from, or Leakage of, other Goods, Effects of Climate or Heat of Holds, Detention at any port of Transhipment, Risk of Craft, of Transhipment, and of Storage afloat or on shore ; Explosion, Fire on board, in Hulk after transhipment, in Craft, or on shore ; Accidents to, or defects in Hull, Tackle, Boilers or Machinery, or their Appurtenances ; Barratry, neglect, default, or error in judgment of the Pilot, Master, Mariners, Engineers, or others in the service of the Owners ; Collision, Stranding, Straining or other Peril of the Seas, Rivers, or Navigation, of whatever nature or kind soever, and howsoever caused), unto

Or to his or their Assigns, shippers paying Freight for the said Goods in as per margin, Ship lost or not lost, for which Freight the Company shall have a lien on the said goods. General average, if any, payable according to York and Antwerp Rules, and to be paid by Shippers.

Weights, Contents and Value unknown. In case the Goods, or any part thereof, cannot be discharged during the Ship's stay at the Port of Delivery, by reason of the state of the weather or other cause, or if they cannot be found they may be retained on board and delivered on her return trip, or sent back by another Steamer, at the Steamer's expense ; the Steamer not to be responsible for loss or claim arising from delay, sea, or other risk. Double Freight will be charged on all Goods not correctly described.

The Company will not be responsible for correct delivery, unless each package is specially and legibly marked by the Shipper before shipment, with the name of the Port of Delivery in letters not less than two inches long. All fines and expenses, or losses by detention of Vessel or Cargo caused by incorrect or insufficient marking of the packages, or by incomplete or incorrect description or weight (or any other particulars required by the authorities at the Port of Shipment or Delivery) either upon the packages or the Bill of Lading, shall be paid by the Shipper or Consignee of the Goods, and the Steamer shall have a lien upon the Goods for payment of all such costs and charges. No claim will be admitted under this Bill of Lading, unless made within four months from date hereof.

The Company's liability in case of loss, or detention or injury to Goods, for which they may be responsible, to be calculated on, and in no case to exceed the first cost of the Goods and charges at Port of Shipment, including Freight, if paid, and the claim to be preferred only at Liverpool.

If the Consignee shall not have Craft alongside for receiving the Goods herein specified, within four hours after the arrival of the Steamer they may, at Shipper's or Consignee's risk and expense, be landed and stored or put into Hulk or Craft, or carried forward to the Steamer's furthest port of call, and landed and stored on her return. Goods discharged into Company's Craft or Hulks, being received for the convenience of Shippers or Consignees, are, while in the Craft or Hulk, at the Shipper's or Consignee's risk, and the Company shall not be answerable for loss arising from theft by any party whomsoever, defective stowage, fire, injury from other cargo, or want of prompt delivery; and further, in the event of such Goods remaining in the Hulk or Craft beyond seven days, the Shippers or Consignees shall pay for the privilege, according to the Company's tariff.

In case of the Blockade or Interdict of the port of Delivery, or if, without such Blockade or Interdict the entering of the port should be considered by the Master unsafe, by reason of war or disturbances, he is to have the option of landing the Goods at any other Port which he may consider safe, at Shipper's expense and risk.

In the event of Quarantine, the Goods to be discharged on arrival into Quarantine Depôt, Hulk, Lighter, or other Vessels necessary for Steamer's despatch at the Consignee's risk and expense; or should this be impracticable, or the Steamers not admitted, the Master to have the option, and is hereby authorised to land the Cargo at the nearest safe Port to which the Vessel is bound, at the risk and expense of the Consignees. All Quarantine expenses upon the Goods, of whatever nature and kind, to be likewise paid by the Shippers or Consignees of the Goods.

In all cases the Steamer's responsibility to cease when the Goods have left her Deck.

In Witness whereof, the Master or Agent of the said Steamer hath affirmed to Bills of Lading, all of this tenor and date, one of which being accomplished, the others to stand void. If required by the Owners or their Agents, one of the Bills of Lading must be given up, duly endorsed, in exchange for the goods.

Dated in this day of 188

FOR THE MASTER.

NOTICE.—Goods for SIERRA LEONE will be landed there at Steamer's expense but at Consignee's risk.

NORTH AMERICAN TRADE.

Shipped in good order and well conditioned by
in and upon the Steam-ship called the whereof is Master for the present
voyage . or whoever else may go as Master in the said ship, and now
lying in the Port of and bound for with liberty to call and receive cargo and passengers at
or elsewhere, and to sail with or without Pilots, and to tow and assist vessels in all situations, and to all ports,
being marked and numbered as in the margin, and are to be delivered (subject to the following exceptions and conditions, viz:—The Act of God, the Queen's Enemies, Pirates, Robbers, Thieves by land or at sea, Barratry of Master or Mariners, Restraint of Princes, Rulers or Peoples; loss or damage resulting from Vermin, rust, sweating, wastage, leakage, breakage, or from Rain, Spray, Coal or Coal-dust, insufficiency of strength of packages, inaccuracy, indistinctness, illegibility, or obliteration of marks, numbers, brands or addresses or descriptions of goods, injury to wrappers however caused, or from corruption, frost, decay, stowage, or contact with or smell or evaporation from other goods, or from loss or damage caused by heavy weather, or pitching or rolling of the vessel, or from inherent deterioration, risk of lighterage to or from the vessel, transhipment, jettison, explosion, spontaneous combustion, Fire before Loading, in the Ship, or after unloading, Heat, Boilers, Steam or Steam machinery including consequences of defect therein or damage thereto, Collision, Stranding, Straining or other perils of the Seas, Rivers, Steam and Steam Navigation, or land transit of whatsoever nature or kind. And all damage, loss or injury arising from the perils, or matters above-mentioned, and whether such perils or matters arise from the negligence, default or error in judgment of the Pilot, Master, Mariners, Engineers, Stevedores, or other persons in the service of the Shipowner. Not accountable for weight, contents, value, length, measure or quantities or condition of contents, nor for Money, Documents, Gold, Silver, Bullion, Specie, Precious Metals, Jewellery, Precious Stones, or other highly valued goods, or beyond the amount of one hundred pounds sterling for any one package unless Bills of Lading are signed therefor and the value therein expressed and freight paid accordingly. The National Steam-ship Company, Limited, or its agents or any of its servants are not to be liable for any damage to any goods which is capable of being covered by insurance, nor for any claim notice of which is not given before the removal of the goods, nor for any claims for loss, damage or detention to goods under through Bill of Lading, where the loss or detention occurs or damage is done whilst the goods are not actually in the possession of the National Steam-ship Company, (Limited,) or shipped on board the National Steam-ship Company's (Limited) Steamer, nor in any case for more than the known or invoiced value of the goods whichever shall be least. Goods of an inflammable, explosive, or otherwise dangerous character shipped without permission and full disclosure of their nature and contents may be seized and confiscated or destroyed by the Ship-owner at any time before delivery without any compensation to the shipper or consignee. In case any part of the within goods cannot be found for delivery during the vessel's stay at the port of destination, they are when found to be sent back by first steamer at ship's expense, the steamer not to be held liable for any claim for delay or sea risks. The only condition upon which glass will be carried is that the Shipowner shall not be held

liable for any breakage which may occur from negligence or any other cause whatever. The goods to be taken from alongside by the consignee immediately the vessel is ready to discharge, or otherwise they will be landed by the Master and deposited at the expense of the consignee and at his risk of fire, loss or injury in the warehouse provided for that purpose, or in the public store as the Collector of the port of New York shall direct, and when deposited in the warehouse or store to be subject to storage, the Collector of the port being hereby authorized to grant a general order for discharge immediately after entry of the Ship. The United States Treasury having given permission for goods to remain 48 hours on wharf in New York, any goods so left by Consignee will be at his or their risk of fire, loss or injury. In the event of the said steamer being prevented from any cause, from commencing or pursuing this voyage, or putting back to London or into any port or otherwise being prevented from any cause from proceeding in the ordinary course of her voyage, to have liberty to tranship the goods by any other steamer to call at any port or ports. All fines, expenses, losses, or damage which the ship or cargo may incur or suffer on account of incorrect or insufficient marking of the packages, or descriptions of their contents, shall be paid by the shipper or consignee, as may be required, and the Shipowner shall have a lien upon the goods for the payment thereof. In the case of all goods at through rates to the interior of the United States or Canada, the shipper and/or consignee engages to supply the Agent of the steamer at New York with the necessary papers for passing the goods through the Custom House by the time of Steamer's arrival; or to pay all extra expenses incurred in default thereof. Should any existing or future order or restriction of the English Emigration Commissioners, or of the English Board of Trade authorities, prevent the above goods from being conveyed in any passenger vessel, the National Steam-ship Company (Limited) or any of its servants or agents are to be free of any liability for non-fulfilment of their portion of this contract. In accepting this Bill of Lading the shipper or other agent of the owner of the property carried, expressly accepts and agrees to all its stipulations, exceptions and conditions, whether written or printed) in the like good order and well conditioned, from the ship's tackles (where the ship's responsibility shall cease) at the aforesaid port of

unto

or to his or their assigns. Freight and primage for the said goods to be paid at as per margin, with average accustomed. Freight, if payable in to be paid on delivery of the Bills of Lading, in cash without deduction, vessel lost or not lost. Freight, if payable abroad, to be paid in currency or gold (at the current rate of exchange for Bankers' Sight Bills on the day of the Steamer's arrival) at consignee's option, and before delivery of any portion of the goods specified.

In Witness whereof the Master or Agent of the said ship hath affirmed to Bills of Lading, exclusive of the Master's copy, all of this tenor and date, one of which Bills being accomplished, the others to stand void.

Dated in 187

Freight on at per ton

Primage

Total

WEST INDIA TRADE.

Shipped, in good order and condition, by on board the Steam Ship whereof is Master for this present voyage lying in the port of the undermentioned goods, for with liberty for Steamer to take in Coal or other necessary supplies, and to discharge, load, or tranship Cargo or Passengers into any other Steamships, vessels, or craft at any intermediate port or ports, or places, to sail with or without Pilots, and to tow and assist vessels in all situations of distress being marked and numbered as per margin ; and to be delivered, subject to the exceptions and conditions hereinafter mentioned, in the like good order and condition, from the ship's tackles (where the ship's responsibility shall cease) at the aforesaid port of or so near thereto as she may safely get, unto or to his or their Assigns. Freight for the said goods and Primage (if any) to be paid by the Shippers in on delivery of the Bills of Lading, in cash without deduction, ship lost or not lost. Average as accustomed.

The following are the exceptions and conditions above referred to :—

Weight, measure, quality, contents, and value unknown.

The Act of God; the Queen's Enemies; Pirates; Robbers by land or sea; restraint of Princes, Rulers, or People; loss or damage from machinery, boilers, or steam, or from explosion, heat or fire on board, in hulk or craft, or on shore; jettison; barratry; any act, neglect, or default whatsoever, of Pilots, Master, or Crew in the management or navigation of the ship; and all and every the dangers and accidents of the seas, rivers, and canals, and of navigation of whatever nature or kind are excepted.

The Ship is not liable for insufficient packing, or reasonable wear and tear of packages; for inaccuracies, obliteration or absence of marks, numbers, address, or description of goods shipped; leakage; breakage; loss or damage by dust from coaling on the voyage; sweat; rust; decay; rats; vermin. Fines and expenses, and losses by detention of ship or cargo, caused by incorrect marking, or by incomplete or incorrect description of contents or weight, or of any other particulars required by the authorities at the port of discharge, upon either the packages or bills of lading, shall be borne by the owners of the goods.

The Steamer, while detained at any port for the purpose of coaling, is at liberty to discharge and receive goods and passengers.

The Owners of this Steamer will not be accountable for Gold, Silver, Bullion, Specie, Jewellery, Precious Stones, or Precious Metals, or beyond the amount of One Hundred Pounds for any one package, unless the Bills of Lading are signed for such goods, and the value declared therein. All bags of money which at destination be found to contain a larger sum than that declared, shall be charged double freight. The Steamer's responsibility commences and ceases for all such articles of value on the gangway of the Steamer.

If Medicinal Fluids, or any other goods of an inflammable, damaging, or dangerous nature, are shipped without being previously declared and arranged for, they are liable, upon discovery, to be thrown overboard, and the loss will fall upon the shippers or owners of such fluids or goods; and the shippers shall be responsible for any damages or costs whatever the owners of the Steamer shall be exposed to in consequence of the true contents of such packages not having been declared.

The goods are to be removed from the ship as soon as she is ready to unload, and if not thereupon removed without delay by the Consignee, the Master or Agent is to be at liberty to land the same, or, if necessary to discharge into hulk, lazaretto, or hired lighters, at the risk and expense of the owners of the goods.

In case of Quarantine, the goods may be discharged into quarantine depôt, hulk, or other vessel, as required for the ship's despatch. Quarantine expenses upon the goods, of whatever nature or kind, shall be borne by the owners of the goods.

In case of the blockade or interdict of the port of discharge, or if the entering of or discharging in the port shall be considered by the Master unsafe by reason of war or disturbances, or should the Steamer enter a port of discharge, and from any cause be prevented from commencing to discharge within five days from arrival, the Master may land the goods at the nearest safe and convenient port, in his opinion, at the expense and risk of the owners of the goods, and the freight shall be considered earned; and the ship's responsibility shall cease when the goods are so discharged into proper and safe keeping, the Master giving immediate notice of the same to the consignees of the goods, so far as they can be ascertained.

When in consequence of bad weather, or the necessities of the service, the merchandize shall not be disembarked at port of destination, the Captain is authorised to load the Merchandize on another Steamer or deliver it at one of the following ports on his voyage, whence it shall be afterwards re-carried to its destination as above, at the cost of the Steamer, but at the risk of the Shippers; without the Shippers or any one having any claim or indemnity for the delay which has resulted from this prolongation of the voyage.

The Master or Agent shall have a lien on the goods for freight, primage, demurrage, and payments made or liabilities incurred in respect of any charges stipulated herein to be borne by the owners of the goods.

In case any part of the within goods cannot be found during the ship's stay at the port of destination, they are when found to be sent back by first steamer, at the ship's risk and expense, and subject to any proved claim for loss of market, but the ship shall not be liable for incorrect delivery unless each package shall have been distinctly marked by the Shippers before shipment with the name of the port of destination.

The Steamer is not responsible for the risks of embarking or of disembarking live animals, nor for accidents or mortality during the voyage.

The Owners of the Steamer take upon themselves the collecting of disbursements, but the Shippers guarantee to pay such in case of non-payment at destination.

In Witness whereof the Master or Agent of the said Ship has signed Bills of Lading, exclusive of the Master's copy, all of this tenor and date, one of which being accomplished the others to stand void.

Dated at the day of 188

Marks.	Nos.	Packages.	Measurement.		Weight.		

Measurements and Weights must be always inserted above.

SOUTH AMERICAN TRADE.

Shipped, in good order and well-conditioned by
on board the Screw Steamer
whereof is Commander, now lying in the
and bound for calling at for Mails. To sail with or
without Pilots, and to tow and assist Vessels in all situations of distress.

being marked and numbered as per margin ; to be delivered, as above, in like good order and condition, subject to the exceptions and conditions hereinafter mentioned.

The following are the exceptions and conditions above referred to :—

Weight, measure, quality, contents and value unknown.

The Steamer to have liberty to go alongside a Wharf or Wharves in the Demerara River, and the Charterers to have the option of landing the Goods if necessary there and to convey the same by land or water to the Consignees as customary at shipper's risk.

The Act of God, the Queen's Enemies, pirates, robbers by land or sea, restraint of princes, rulers or people, loss or damage from machinery, boilers or steam, or from explosion, heat, or fire on board, in hulk or craft, or on shore, jettison, barratry, any act, neglect, or default whatsoever of Pilots, Master, or Crew in the management or navigation of the ship, and all and every the dangers and accidents of the seas and rivers, and of navigation of whatever nature or kind, are excepted.

The Ship free of breakage, rust, leakage, and the consequence of incorrect delivery of goods from insufficiency of marks and numbers.

The Customs entry to be passed by the Consignee, and the permit delivered to the Agent of the Steamer within twenty-four hours after arrival in Demerara River, and in default of this condition being complied with, the Master or Agent is to be at liberty to land the same at the risk and expense of the Consignee or Owner of the Goods.

The Master or Agent shall have a lien on the goods for payments made, or liabilities incurred in respect of any charges stipulated herein to be borne by the owner of the goods.

unto

or their Assigns, Freight, Primage, and Landing Charges, to be paid by the Shipper, in London, with average accustomed, Ship lost or not lost.

In Witness whereof, the Master or Agent of the said Vessel hath affirmed to Bills of Lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated at this day of 188 .

Marks.	Nos.	Packages.	Contents.

CAPE TOWN, ALGOA BAY, NATAL AND SOUTH AFRICAN TRADES.

Shipped in good order and well-conditioned by
on board the Screw-Steamer
whereof is Commander, now lying at
and bound for calling at intermediate Ports.
Packages Merchandize

as per margin, with liberty to tranship the goods at the CAPE OF GOOD HOPE or ALGOA BAY at the Owner's option and expense, and Merchant's risk, into any other steamer or sailing vessel (as the Agent may deem expedient), bound to NATAL, calling at intermediate Ports; to be delivered in like good order and condition at or off NATAL.

In the event of stress of weather, quarantine regulations, or other impediment rendering the immediate discharge of Cargo impracticable, the Goods will be carried on and brought back to the Port of disembarkation; and if such impediments render it necessary to retain the Goods on board, then they will be landed at the Port of Shipment free of all Freight, or conveyed back to their destination under the terms already named, without extra Freight, but at the Merchant's risk throughout. (The Act of God, the Queen's Enemies, Pirates, Robbers by Sea or by Land, Thieves, Restraint of Princes, Rulers and People, Vermin, Barratry, Fire on Board, in Hulk, or Craft, or on Shore, Jettison, all Accidents, Loss, and Damage whatsoever, from Explosion, Collision, Machinery, Boilers, Fuel, and Steam, and Steam Navigation, or from Perils of the Seas, or of Land or Rivers, of whatever nature or kind soever; or from any act, neglect, or default whatsoever of the Pilot, Master or Crew, in navigating the Ship, and Detentions, Delays, or

Deviations being excepted, and the Owners being in no way liable from any consequences of the causes above excepted, and with liberty during the voyage to call at any Port or Ports for all purposes, to sail with or without Pilots, and to tow and assist Vessels in all situations.)

unto

or their Assigns, Freight, as per margin, being first paid by the Shipper, Ship lost or not lost; average accustomed.

In Witness whereof, the Master or Purser of the said Vessel hath affirmed to Three Bills of Lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated at this day of 1880

Weight, Contents, and Value unknown, and not accountable for inaccurate description of Goods shipped, for Leakage, Breakage, Rust, or insufficiency of Address or Package. The Cargo, if not taken out on the day of arrival may be landed, or put into a hulk or receiving ship by the Owner's Agents, at the expense and risk of the Consignee.

FOR THE CAPTAIN.

*** The PENALTY imposed by the "Merchant Shipping Act," for shipping Goods of a dangerous nature, without notice is £100, but Shippers are warned that, in the event of destruction of, or damage to other property, arising from the fraudulent transmission of dangerous articles, the parties making such false declaration are liable by law for the full amount of all the damages that may be sustained through their misconduct, and in case of fatal results would be exposed to a criminal prosecution.

NEW ZEALAND TRADE.

Shipped in good order and condition by
on board the Steam Ship of the ORIENT Line
whereof is Master for this present voyage
now lying in the Port of and bound for
with liberty to receive and to discharge goods and passengers, and to take in Coal or other supplies at any intermediate Port or Ports, and to sail with or without Pilots, and to tow and assist vessels in all situations, the following goods, viz.—
being marked and numbered as in the margin, and to be transhipped at the aforesaid Port of
to one of the steamers of the for
from departing after the 's arrival there,
and to be delivered in the like good order and condition from the ship's deck at her anchorage (where the ship's responsibility shall cease) at the aforesaid Port of (or so near thereto as she may safely get) unto
or to his or their Assigns. Freight for the said Goods, with primage, to become due on shipment, and to be paid in in cash without deduction, ship lost or not lost. Average as accustomed. This contract is throughout subject to the following exceptions and conditions, viz. :—All responsibility of the Owners of the Line is to cease on transhipment at or on delivery of the goods to the Agents of the at for the purpose of transhipment, which Company shall then be alone responsible on the terms of their Bill of Lading for the Inter-Colonial trade.

The Act of God, the Queen's Enemies, Pirates, Robbers or Thieves, but not pilferage, Restraints of Princes, Rulers, or People, and loss or damage resulting from any of the following causes or perils are excepted, viz: Insufficiency in packing or in strength of packages, loss or damage from coaling on the voyage, rust, vermin, breakage, leakage, sweating, evaporation, or decay; injurious effects of other goods; effects of climate or heat of holds; risk of craft, of transhipment and of storage afloat or on shore; fire on board, in hulk, in craft, or on shore; explosion; accidents to, or defects in hull, tackle, boilers or machinery or their appurtenances; barratry, jettison, neglect, default or error in judgment of the master, mariners, engineers or others in the service of the owners; collision, stranding, or other peril of the seas, rivers, or navigation of whatsoever nature or kind and howsoever caused, and accidents, loss, damage, delay or detention from any act or default of the Egyptian Government or the administration of the Suez Canal, or arising out of or consequent upon the employment of the Vessels of the Line in Her Majesty's Mail Service.

The Ship will not be responsible for correct delivery unless each package is distinctly, correctly, and permanently marked by the Merchant before shipment, with a mark and number, or address, and also with the name of the Port of Delivery which last must be in letters not less than two inches long.

The owners are to be at liberty to carry the said Goods to their Port of Destination, by the above or other Steamer or Steamers, Ship or Ships, either belonging to themselves or to other persons, proceeding by any route, and whether directly or indirectly

to such Port, and in so doing to carry the Goods beyond their Port of Destination, and to tranship or land and store the goods either on shore or afloat and re-ship and forward the same at the Owner's expense but at Merchant's risk.

The Ship will not be accountable for gold, silver, bullion, specie, jewellery, watches, clocks, precious stones, precious metals, bank notes or securities for money, paintings, sculptures, or other works of art, nor beyond the value of £5 per cubic foot, nor exceeding £100 for any one package unless the Bills of Lading are signed with a declaration of the nature and value of the goods appearing thereon ; nor for damage to show cases, nor for breakage of glass, glassware, chinaware, or earthenware of any description, from whatsoever cause arising.

If Chemicals, Liquids, or other goods of a dangerous or damaging nature are shipped without being previously declared and arranged for, they are liable upon discovery to be thrown overboard, and their loss, as well as any loss or damage to the ship or cargo, or to any person or interest whatsoever, will fall upon the Merchants or Owners of such goods. Double freight will be charged on all goods not correctly described.

All fines and expenses or losses by detention of vessel or cargo caused by incorrect or insufficient marking of the package, or by incomplete or incorrect description or weight (or any other particulars required by the Authorities at the Port of Delivery) either upon the packages or the Bill of Lading, shall be paid by the Shipper or Consignees of the Goods.

Consignees or their Assigns must be ready to take delivery of goods as soon as the ship is ready to discharge them, otherwise the Master or Agents shall be at liberty to land and warehouse the goods, or discharge them into a store ship, or hulk, or into lighters, at the Merchant's risk and expense.

Specie deliverable in London will be conveyed from the Steamer to the Bank of England at Owner's expense, but at the Merchant's risk. All liability of the owners is to cease so soon as the Specie is free from the Steamer's tackles.

In case of quarantine, the goods may be discharged into quarantine depôt, hulk, or other vessel, as required for the Ship's despatch. Quarantine expenses upon the goods of whatsoever nature or kind, shall be borne by the owners of the goods.

The Ship shall have a lien upon the goods for all freight and charges, for which the goods are liable under the Bill of Lading.

Any claim that may arise in respect of Goods shipped by this Steamer must be made at the Port of Delivery, and within one month of Steamer's arrival.

Weight, measurement, contents, quality, and value unknown.

In Witness whereof the Master, Purser or Agent of the said Steamer hath affirmed to Bills of Lading, all of this tenor and date, one of which being accomplished the others to stand void. If required by the Owners or their Agents, one of the Bills of Lading must be given up, duly endorsed, in exchange for the goods.

For the above stipulations in so far as they apply to and are to be performed by the Owners and subject to all the exceptions and stipulations contained in their Bill of Lading for the Inter-Colonial trade.

Dated in 188 .

By authority of

Agents.

AUSTRALIAN TRADE (discharging at Ports in New Zealand).

Shipped in good order and condition by
on board the good Steam Ship
whereof is Master for this present voyage,
lying in the Port of and bound for and and
with liberty to receive goods and passengers at any Port in the Channel, and to take in coal or other necessary supplies at any intermediate Port or Ports.

being marked and numbered as in the margin, and to be delivered (subject to the exceptions and stipulations hereinafter mentioned) in the like good order and condition, from the ship's deck, at her anchorage, where the ship's responsibility shall cease, at the aforesaid Port of
(or so near thereto as she may safely get) unto
or to his or their Assigns. Average as accustomed. Freight for the said Goods and primage to be paid by the shippers in London in Cash, without discount, ship lost or not lost.

The following are the exceptions and stipulations referred to:—The Act of God, the Queen's Enemies, Pirates, Robbers by land or sea (but not pilferage), Restraint of Princes, Rulers or People, Fire, Jettison, Barratry, the neglect or default of Pilots,

Master, or Crew in the management or navigation of the Ship, and all and every the Dangers and Accidents of the Seas, Rivers, and Navigation, loss or damage from machinery, boilers or steam, or from explosion, of whatever nature or kind, are excepted.

The Ship is not liable for delays in delivery arising from inaccuracies or absence of marks, numbers, address of goods; or from the absence of the name of the port of delivery, which must be distinctly and permanently marked; nor for leakage, breakage, loss or damage by heat, sweat, rust, or decay, unless occasioned by improper stowage, or for loss or damage by dust from coaling on the voyage.

The Ship will not be liable for gold, silver, bullion, specie, jewellery, precious stones, precious metals, paintings, sculptures or other works of art, unless Bills of Lading are signed for such goods, and the value declared therein.

If Chemicals or other goods of a dangerous nature are shipped without being previously arranged for, they are liable to be thrown overboard, and their loss, as well as any loss or damage to the ship or cargo, will fall upon the shippers or owners of such goods.

In case of quarantine, the goods may be discharged into quarantine depôt, hulk, or other vessel, as required for the Ship's despatch. Quarantine expenses upon the goods of whatsoever nature or kind, shall be borne by the Owners of the Goods.

The Master is to deliver the Goods with all reasonable despatch; and the Consignees are to be ready to receive them within twenty-four hours after the ship commences to unload, otherwise the Master or Agent may discharge and store them at the expense and risk of the owners of the goods.

The Steamer while detained at any Port for the purpose of coaling is at liberty to receive goods or passengers.

In Witness whereof the Master, Owner or Agent of the said Ship has signed Bills of Lading, exclusive of the Master's copy, all of this tenor and date, one of which being accomplished, the others to stand void. Weight, measure, and contents unknown.

Dated in 188

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